

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Wednesday, February 6, 2013

TIME: 3:00 —5:00 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bean, Benacquisto, Bradley, Hukill, Montford, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
A proposed committee substitute for the following bill (SB 4) is available:			
1	SB 4 Ethics and Elections (Compare H 287, H 297, H 381, S 652, Link S 2)	Public Records and Meetings of the Commission on Ethics; Creating an exemption from public records requirements for written referrals and related records held by the Commission on Ethics, the Governor, the Department of Law Enforcement, or state attorneys; creating an exemption from public meetings requirements for proceedings of the Commission on Ethics in which the referrals are discussed or acted upon; extending the period in which the disclosure of the intent to file or the filing of a complaint against a candidate is prohibited; providing an exception; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act, etc. GO 02/06/2013 Fav/CS RC	Fav/CS Yeas 8 Nays 0
A proposed committee substitute for the following bill (SB 458) is available:			
2	SB 458 Ring	Firefighter and Police Officer Pension Plans; Providing for an additional mandatory payment by the municipality or special fire control district to the firefighters' pension trust fund; amending a provision relating to municipalities and special fire control districts that have their own pension plans and want to participate in the distribution of a tax fund; providing for an additional mandatory payment by the municipality to the municipal police officers' retirement trust fund; amending a provision relating to municipalities that have their own pension plans for police officers and want to participate in the distribution of a tax fund, etc. GO 02/06/2013 Temporarily Postponed CA AP	Temporarily Postponed
A proposed committee substitute for the following bill (SB 50) is available:			

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, February 6, 2013, 3:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 50 Negron (Identical H 23)	Public Meetings; Requiring that a member of the public be given a reasonable opportunity to be heard before a board or commission takes official action on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision; providing that the opportunity to be heard is subject to rules or policies adopted by the board or commission; providing that compliance with the requirements of the act is presumed under certain circumstances; authorizing a court to assess reasonable attorney fees in actions filed against a board or commission; providing that any action taken by a board or commission which is found in violation of the act is not void; providing that circuit courts have jurisdiction to issue injunctions for purposes of the act, etc.	Fav/CS Yeas 8 Nays 0
		GO 02/06/2013 Fav/CS AP RC	

Other Related Meeting Documents

CourtSmart Tag Report

Room: KN 412
Caption: Senate Governmental Oversight and Accountability

Type:
Judge:

Started: 2/6/2013 3:04:12 PM
Ends: 2/6/2013 4:59:59 PM **Length:** 01:55:48

3:04:15 PM	Meeting to order
3:04:34 PM	Chair comments
3:05:31 PM	SB 50 - Public Meetings (Senator Negrón)
3:06:04 PM	PCS 430764
3:07:47 PM	Senator Hays question
3:08:18 PM	Senator Negrón
3:08:37 PM	Senator Bradley question
3:10:07 PM	Senator Negrón
3:10:53 PM	Senator Bradley question
3:11:11 PM	Senator Negrón
3:11:23 PM	Senator Bradley question
3:12:00 PM	Senator Negrón
3:13:11 PM	Senator Bradley comment
3:14:36 PM	Senator Bean
3:15:31 PM	Senator Negrón
3:16:15 PM	Senator Montford question
3:16:34 PM	
3:16:42 PM	Senator Negrón
3:17:19 PM	Brian Pitts - Justice-2-Jesus
3:24:54 PM	Senator Negrón
3:26:33 PM	Roll call on CS/SB 50
3:27:04 PM	SB 4 Ethics and Elections
3:27:21 PM	PCS 427416
3:27:51 PM	Dan Carlton, staff Senate Ethics and Elections Committee
3:29:17 PM	Roll call on CS/SB 4
3:29:48 PM	Senator Hays
3:30:02 PM	Senator Ring to explain PCS 427674 to SB 458 (workshopping PCS; no votes to be taken)
3:37:58 PM	Senator Bradley to explain barcode 436070
3:45:06 PM	Senator Hays
3:45:24 PM	Senator Bean to explain barcode 213416
3:47:29 PM	Senator Simmons
3:47:51 PM	Senator Hays
3:47:58 PM	Robert Suarez, Florida Fire Fighters
3:51:40 PM	James Tulley, Mayor of Titusville
3:58:24 PM	Senator Ring
3:59:47 PM	James Tulley
4:00:57 PM	Senator Ring
4:02:16 PM	James Tulley
4:03:23 PM	Senator Ring
4:04:52 PM	Senator Hays
4:06:01 PM	James Tulley
4:06:39 PM	Senator Hays
4:06:55 PM	James Tulley
4:07:40 PM	Senator Hays
4:08:01 PM	Senator Bradley
4:08:25 PM	James Tulley
4:08:38 PM	Senator Bradley
4:08:50 PM	James Tulley
4:08:57 PM	Senator Bradley
4:09:02 PM	James Tulley
4:09:34 PM	Senator Bradley
4:09:44 PM	Senator Ring

4:09:58 PM	
4:10:33 PM	James Tulley
4:10:42 PM	Senator Hays
4:11:14 PM	James Tulley
4:11:32 PM	Senator Hays
4:11:39 PM	James Tulley
4:11:46 PM	Senator Bradley
4:14:19 PM	James Tulley
4:14:28 PM	Senator Bradley
4:14:53 PM	Senator Montford
4:15:20 PM	James Tulley
4:16:17 PM	Senator Ring
4:16:25 PM	Senator Bradley
4:16:42 PM	Senator Hays
4:17:00 PM	James Tulley and City Attorney Dwight W. Severs
4:17:31 PM	Senator Hays
4:19:13 PM	James Tulley
4:19:23 PM	Senator Hays
4:19:38 PM	James Tulley
4:21:17 PM	Howard Schieferdecker, Mayor of Maitland
4:28:01 PM	Senator Ring
4:29:23 PM	Senator Hays
4:30:16 PM	Senator Montford
4:34:58 PM	Kraig Conn, Florida League of Cities
4:37:09 PM	Senator Ring question
4:38:57 PM	Senator Simmons questions and answers of Kraig Conn
4:49:55 PM	Senator Ring
4:50:52 PM	Senator Benacquisto
4:51:40 PM	David Murrell, Florida Police Benevolent Assoc.
4:53:47 PM	Lisa Henning, Fraternal Order of Police
4:56:50 PM	Senator Ring
4:58:34 PM	Senator Benacquisto motion to vote after on SB 50
4:58:42 PM	Senator Ring

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: PCS/SB 4 (427416)

INTRODUCER: Committee on Governmental Oversight and Accountability

SUBJECT: Public Records and Meetings of the Commission on Ethics

DATE: February 5, 2013

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carlton	Roberts		ee SPB 7008 as introduced
2. Naf	McVaney	GO	Pre-meeting
3. _____	_____	RC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

PCS/SB 4 (427416) is a public records and meetings bill linked to SB 2, which, in part, authorizes specified public officers to refer cases of possible ethics violations to the Florida Commission on Ethics (state commission). This bill adds to existing public records and meetings exemptions related to complaints of possible ethics violations received by the state commission.

This bill creates a temporary public records exemption for:

- Written referrals of possible ethics violations and records relating to such referrals that are held by the state commission, its agents, or a public officer authorized to make such a referral; and
- Records relating to any preliminary investigation of such referrals that are held by the state commission or its agents.

This bill also creates a temporary public meetings exemption for any portion of a proceeding of the state commission in which a determination regarding a referral is discussed or acted upon. The bill subjects the newly created public records and meetings exemptions to the conditions upon which the existing public records and meetings exemptions expire and adds a new condition.

The bill clarifies that the existing public meetings exemption for any proceeding conducted by the state commission or a local government pursuant to a complaint or preliminary investigation is limited to those *portions of* proceedings that are conducted pursuant to a complaint or preliminary investigation.

This bill extends the existing Open Government Sunset Review repeal date from October 2, 2015 to October 2, 2018. It provides a public necessity statement as required by the Florida Constitution.

Because this bill creates new public records and meetings exemptions, it requires a two-thirds vote of the members present and voting in each house for passage.

This bill substantially amends section 112.324, Florida Statutes.

II. Present Situation:

Public Records and Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or public meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Exemptions are subject to the Open Government Sunset Review Act,¹³ which prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁵

Entities that may Investigate Possible Ethics Violations

The Florida Commission on Ethics (state commission) serves as a guardian of the standards of conduct for officers and employees of the state and its political subdivisions.¹⁶ It is an independent commission responsible for investigating and issuing public reports on complaints of breaches of the public trust¹⁷ by public officers and employees.¹⁸ The state commission must investigate sworn complaints of violation of the Code of Ethics for Public Officers and Employees (Code of Ethics)¹⁹ or of any other law over which it has jurisdiction.²⁰ It may only

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁵ Section 119.15(3), F.S.

¹⁶ See FLA. CONST. art. II, s. 8; and s. 112.320, F.S.

¹⁷ Section 112.312(3), F.S., defines “breach of the public trust” to mean a violation of a provision of the Florida Constitution or the Code of Ethics that establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of Art. II, s. 8 of the Florida Constitution, or of the Code of Ethics.

¹⁸ See FLA. CONST. art. II, s. 8

¹⁹ The Code of Ethics is comprised of part III of ch. 112, F.S.

initiate an ethics investigation if it receives such a sworn complaint.²¹ There is no process by which another public officer may refer a possible ethics violation.

Additionally, current law provides that the Code of Ethics does not prohibit the governing body of a political subdivision or an agency from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, so long as those standards and requirements do not otherwise conflict with the Code of Ethics.²²

Neither the Florida Constitution nor the Code of Ethics specifically addresses the creation of a county or municipality “Commission on Ethics and Public Trust.” The existing public records and meetings exemptions relating to complaints and investigations of possible ethics violations, however, include such local commissions in the categories of entities to whom the exemptions apply.²³

Public Records and Meetings Exemptions Relating to Possible Ethics Violations

Current law provides that a complaint of an ethics violation or any records relating to the complaint or to any preliminary investigation that are held by the state commission, a local Commission on Ethics and Public Trust, or any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements²⁴ are temporarily confidential and exempt²⁵ from public records requirements.²⁶

Current law also temporarily exempts any proceeding conducted pursuant to a complaint or preliminary investigation by the state commission, a local Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process from public meetings requirements.²⁷

Both the public records and public meetings exemption expire when:

²⁰ Section 112.322(1), F.S. The state commission is authorized to enforce the following ethics laws: the Code of Ethics in ch. 112, F.S.; Art. II, s. 8 of the Florida Constitution; standards of conduct specific to members and employees of the Public Service Commission and to members of the Public Service Commission Nominating Council (s. 350.043, F.S.); standards governing the use of state motor vehicles or aircraft (s. 287.175, F.S.); and standards governing agency use of public funds to retain lobbyists (s. 11.062(2)(e), F.S.).

²¹ Section 112.324(1), F.S.

²² Section 112.326, F.S.

²³ Section 112.324(2)(a)-(c), F.S.

²⁴ Pursuant to s. 112.326, F.S.

²⁵ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

²⁶ Section 112.324(2)(a), F.S. Such records are temporarily confidential and exempt from s. 119.07(1), F.S., and constitutional public records requirements.

²⁷ Section 112.324(2)(b), F.S. Such proceedings are temporarily exempt from the Sunshine Law, constitutional public meetings requirements, and s. 120.525, F.S., which sets forth timing and content requirements for notices and agendas of public meetings, workshops, and hearings of agencies subject to ch. 120, F.S.

- The complaint is dismissed as legally insufficient;
- The alleged violator requests in writing that the records and proceedings be made public; or
- The state commission, local Commission on Ethics and Public Trust, or county or municipality that has established such local investigatory process determines whether probable cause exists to believe that a violation has occurred.²⁸

III. Effect of Proposed Changes:

Linked Bill

This bill is linked to SB 2, which, in part, authorizes the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney to submit a written referral of a possible violation of the Code of Ethics or other possible breach of the public trust to the Florida Commission on Ethics (state commission).²⁹ SB 2 authorizes the state commission to investigate such referral if it determines by a supermajority vote that the referral is sufficient to indicate a violation.³⁰

Public Records and Meetings Exemptions Relating to Possible Ethics Violations

This bill amends subsection (2) of s. 112.324, F.S., to add new public records and meetings exemptions required by changes proposed in SB 2 to the existing public records and meetings exemptions related to complaints of possible ethics violations submitted to the state commission.

The bill clarifies that the existing public meetings exemption for any proceeding conducted by the state commission or a local government pursuant to a complaint or preliminary investigation is limited to those *portions of* proceedings that are conducted pursuant to a complaint or preliminary investigation.

The bill makes the following records temporarily confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Written referrals of possible ethics violations and records relating to such referrals that are held by the state commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney;³¹ and
- Records relating to any preliminary investigation of such referrals that are held by the state commission or its agents.

The bill also makes any portion of a proceeding conducted by the state commission in which a determination regarding a referral is discussed or acted upon temporarily exempt from s. 286.011, F.S.; s. 24(b), Art. I of the Florida Constitution; and s. 120.525, F.S.

²⁸ Section 112.324(2)(c), F.S.

²⁹ Lines 1314-1319 of the bill.

³⁰ The state commission consists of nine unpaid, appointed members (s. 112.321(1) and (3), F.S.). SB 2 requires a yes vote of six members to initiate an investigation based upon a referral.

³¹ United States Attorneys are not included in the exemption because a United States Attorney is a federal, not state, agency.

The bill subjects the new exemptions to the statutory conditions upon which the existing exemptions expire. It also adds “the commission determines that it will not investigate the referral” to such existing statutory conditions.

The bill extends the Open Government Sunset Review repeal date for s. 112.324(2), F.S., from October 2, 2015 to October 2, 2018.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill takes effect on the same date that SB 2 takes effect. SB 2 is to take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates new public records and meetings exemptions, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates new public records and meetings exemptions, it includes a public necessity statement.

Single Subject

Section 24(c), Art. I of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain only exemptions from constitutional public records and open meetings requirements and provisions governing the enforcement of the section. This bill creates new public records and open meetings exemptions.

Lines 54-57 of the bill exempt any proceeding of the commission in which a determination regarding a referral is discussed or acted upon from s. 286.011, F.S., s. 24(b), Art. I of the Florida Constitution, and s. 120.525, F.S. Section 120.525, F.S., sets forth timing and content requirements for notices and agendas of public meetings, hearings, and workshops of agencies subject to ch. 120, F.S. It is unclear whether the inclusion of s. 120.525, F.S., in the exempted provisions constitutes a substantive provision.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Commission on Ethics, the Governor, the Department of Law Enforcement, and state attorneys may incur indeterminate administrative costs related to temporary maintenance of the confidentiality of referrals, related records, and records relating to preliminary investigations of referrals. The Commission on Ethics also may incur indeterminate administrative costs related to compliance with the public meetings exemption for proceedings relating to referrals. Any such indeterminate administrative costs would likely be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is linked to Senate Bill 2.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS (427416) by Committee on Governmental Oversight and Accountability:

The PCS differs from the original bill in that it:

- Does not amend a substantive current law restriction on times in which an ethics complaint may be filed or an intent to file such complaint may be disclosed.
- Clarifies that the current public meetings exemption relating to possible ethics violations and the public meetings exemption for referrals of possible ethics violations created by the bill apply only to *those portions of* proceedings at which confidential and exempt information is discussed.
- Clarifies that referrals are confidential and exempt when held by *a* state attorney, not by state attorneys in the plural.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



427416

585-01514A-13

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to public records and meetings; amending s. 112.324, F.S.; creating an exemption from public records requirements for written referrals and related records held by the Commission on Ethics, the Governor, the Department of Law Enforcement, or a state attorney; creating an exemption for records relating to a preliminary investigation held by the Commission on Ethics; creating an exemption from public meetings requirements for portions of proceedings of the Commission on Ethics in which the referrals are discussed or acted upon; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations; public records and meeting exemptions.—

(2) (a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any



427416

585-01514A-13

municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Any portion of a proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from ~~the provisions of~~ s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any portion of a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e) ~~(c)~~ The exemptions in paragraphs (a)-(d) ~~(a)~~ and ~~(b)~~ apply until:

1. The complaint is dismissed as legally insufficient;

until

2. The alleged violator requests in writing that such records and proceedings be made public;



427416

585-01514A-13

57 3. The commission determines that it will not investigate
58 the referral; or until

59 4. The commission, a Commission on Ethics and Public Trust,
60 or a county or municipality that has established such local
61 investigatory process determines, based on such investigation,
62 whether probable cause exists to believe that a violation has
63 occurred.

64 (f) In no event shall a complaint under this part against a
65 candidate in any general, special, or primary election be filed
66 or any intention of filing such a complaint be disclosed on the
67 day of any such election or within the 5 days immediately
68 preceding the date of the election.

69 (g) ~~(d)~~ This subsection is subject to the Open Government
70 Sunset Review Act in accordance with s. 119.15 and shall stand
71 repealed on October 2, 2018 ~~2015~~, unless reviewed and saved from
72 repeal through reenactment by the Legislature.

73 Section 2. (1) The Legislature finds that it is a public
74 necessity that written referrals and records relating to such
75 referrals held by the Commission on Ethics or its agents, the
76 Governor, the Department of Law Enforcement, or a state
77 attorney, and records relating to any preliminary investigation
78 of such referrals held by the Commission on Ethics or its
79 agents, be confidential and exempt from public records
80 requirements until the commission determines that it will not
81 investigate the referral, until the alleged violator requests in
82 writing that such records be made public, or until it is
83 determined by the commission based upon a preliminary
84 investigation of the referral whether probable cause exists to
85 believe that a violation has occurred. This exemption is



427416

585-01514A-13

86 necessary because the release of such information could
87 potentially be defamatory to an individual under investigation,
88 cause unwarranted damage to the reputation of such individual,
89 or significantly impair the integrity of the investigation.

90 (2) The Legislature also finds that it is a public
91 necessity that portions of proceedings of the Commission on
92 Ethics at which a determination regarding a referral is
93 discussed or acted upon be exempt from public meetings
94 requirements until the commission determines that it will not
95 investigate the referral, until the alleged violator requests in
96 writing that such proceedings be made public, or until it is
97 determined by the Commission on Ethics, based on a preliminary
98 investigation of the referral, whether probable cause exists to
99 believe that a violation has occurred. This exemption is
100 necessary because the release of such information could
101 potentially be defamatory to an individual under investigation,
102 cause unwarranted damage to the reputation of such individual,
103 or significantly impair the integrity of the investigation.

104 Section 3. This act shall take effect on the same date that
105 SB 2 or similar legislation takes effect, if such legislation is
106 adopted in the same legislative session or an extension thereof
107 and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 4

INTRODUCER: Governmental Oversight and Accountability Committee and Ethics and Elections Committee

SUBJECT: Public Records and Meetings of the Commission on Ethics

DATE: February 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts		ee SPB 7008 as introduced
2.	Naf	McVaney	GO	Fav/CS
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 4 is a public records and meetings bill linked to SB 2, which, in part, authorizes specified public officers to refer cases of possible ethics violations to the Florida Commission on Ethics (state commission). This bill adds to existing public records and meetings exemptions related to complaints of possible ethics violations received by the state commission.

This bill creates a temporary public records exemption for:

- Written referrals of possible ethics violations and records relating to such referrals that are held by the state commission, its agents, or a public officer authorized to make such a referral; and
- Records relating to any preliminary investigation of such referrals that are held by the state commission or its agents.

This bill also creates a temporary public meetings exemption for any portion of a proceeding of the state commission in which a determination regarding a referral is discussed or acted upon. The bill subjects the newly created public records and meetings exemptions to the conditions

upon which the existing public records and meetings exemptions expire and adds a new condition.

The bill clarifies that the existing public meetings exemption for any proceeding conducted by the state commission or a local government pursuant to a complaint or preliminary investigation is limited to those *portions of* proceedings that are conducted pursuant to a complaint or preliminary investigation.

This bill extends the existing Open Government Sunset Review repeal date from October 2, 2015, to October 2, 2018. It provides a public necessity statement as required by the Florida Constitution.

Because this bill creates new public records and meetings exemptions, it requires a two-thirds vote of the members present and voting in each house for passage.

This bill substantially amends section 112.324, Florida Statutes.

II. Present Situation:

Public Records and Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or public meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Exemptions are subject to the Open Government Sunset Review Act,¹³ which prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁵

Entities that may Investigate Possible Ethics Violations

The Florida Commission on Ethics (state commission) serves as a guardian of the standards of conduct for officers and employees of the state and its political subdivisions.¹⁶ It is an independent commission responsible for investigating and issuing public reports on complaints of breaches of the public trust¹⁷ by public officers and employees.¹⁸ The state commission must investigate sworn complaints of violation of the Code of Ethics for Public Officers and Employees (Code of Ethics)¹⁹ or of any other law over which it has jurisdiction.²⁰ It may only

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁵ Section 119.15(3), F.S.

¹⁶ See FLA. CONST. art. II, s. 8; and s. 112.320, F.S.

¹⁷ Section 112.312(3), F.S., defines “breach of the public trust” to mean a violation of a provision of the Florida Constitution or the Code of Ethics that establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of Art. II, s. 8 of the Florida Constitution, or of the Code of Ethics.

¹⁸ See FLA. CONST. art. II, s. 8

¹⁹ The Code of Ethics is comprised of part III of ch. 112, F.S.

initiate an ethics investigation if it receives such a sworn complaint.²¹ There is no process by which another public officer may refer a possible ethics violation.

Additionally, current law provides that the Code of Ethics does not prohibit the governing body of a political subdivision or an agency from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, so long as those standards and requirements do not otherwise conflict with the Code of Ethics.²²

Neither the Florida Constitution nor the Code of Ethics specifically addresses the creation of a county or municipality “Commission on Ethics and Public Trust.” The existing public records and meetings exemptions relating to complaints and investigations of possible ethics violations, however, include such local commissions in the categories of entities to whom the exemptions apply.²³

Public Records and Meetings Exemptions Relating to Possible Ethics Violations

Current law provides that a complaint of an ethics violation or any records relating to the complaint or to any preliminary investigation that are held by the state commission, a local Commission on Ethics and Public Trust, or any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements²⁴ are temporarily confidential and exempt²⁵ from public records requirements.²⁶

Current law also temporarily exempts any proceeding conducted pursuant to a complaint or preliminary investigation by the state commission, a local Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process from public meetings requirements.²⁷

Both the public records and public meetings exemption expire when:

²⁰ Section 112.322(1), F.S. The state commission is authorized to enforce the following ethics laws: the Code of Ethics in ch. 112, F.S.; Art. II, s. 8 of the Florida Constitution; standards of conduct specific to members and employees of the Public Service Commission and to members of the Public Service Commission Nominating Council (s. 350.043, F.S.); standards governing the use of state motor vehicles or aircraft (s. 287.175, F.S.); and standards governing agency use of public funds to retain lobbyists (s. 11.062(2)(e), F.S.).

²¹ Section 112.324(1), F.S.

²² Section 112.326, F.S.

²³ Section 112.324(2)(a)-(c), F.S.

²⁴ Pursuant to s. 112.326, F.S.

²⁵ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

²⁶ Section 112.324(2)(a), F.S. Such records are temporarily confidential and exempt from s. 119.07(1), F.S., and constitutional public records requirements.

²⁷ Section 112.324(2)(b), F.S. Such proceedings are temporarily exempt from the Sunshine Law, constitutional public meetings requirements, and s. 120.525, F.S., which sets forth timing and content requirements for notices and agendas of public meetings, workshops, and hearings of agencies subject to ch. 120, F.S.

- The complaint is dismissed as legally insufficient;
- The alleged violator requests in writing that the records and proceedings be made public; or
- The state commission, local Commission on Ethics and Public Trust, or county or municipality that has established such local investigatory process determines whether probable cause exists to believe that a violation has occurred.²⁸

III. Effect of Proposed Changes:

Linked Bill

This bill is linked to SB 2, which, in part, authorizes the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney to submit a written referral of a possible violation of the Code of Ethics or other possible breach of the public trust to the Florida Commission on Ethics (state commission).²⁹ SB 2 authorizes the state commission to investigate such referral if it determines by a supermajority vote that the referral is sufficient to indicate a violation.³⁰

Public Records and Meetings Exemptions Relating to Possible Ethics Violations

This bill amends subsection (2) of s. 112.324, F.S., to add new public records and meetings exemptions required by changes proposed in SB 2 to the existing public records and meetings exemptions related to complaints of possible ethics violations submitted to the state commission.

The bill clarifies that the existing public meetings exemption for any proceeding conducted by the state commission or a local government pursuant to a complaint or preliminary investigation is limited to those *portions of* proceedings that are conducted pursuant to a complaint or preliminary investigation.

The bill makes the following records temporarily confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Written referrals of possible ethics violations and records relating to such referrals that are held by the state commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney;³¹ and
- Records relating to any preliminary investigation of such referrals that are held by the state commission or its agents.

The bill also makes any portion of a proceeding conducted by the state commission in which a determination regarding a referral is discussed or acted upon temporarily exempt from s. 286.011, F.S.; s. 24(b), Art. I of the Florida Constitution; and s. 120.525, F.S.

²⁸ Section 112.324(2)(c), F.S.

²⁹ Lines 1314-1319 of the bill.

³⁰ The state commission consists of nine unpaid, appointed members (s. 112.321(1) and (3), F.S.). SB 2 requires a yes vote of six members to initiate an investigation based upon a referral.

³¹ United States Attorneys are not included in the exemption because a United States Attorney is a federal, not state, agency.

The bill subjects the new exemptions to the statutory conditions upon which the existing exemptions expire. It also adds “the commission determines that it will not investigate the referral” to such existing statutory conditions.

The bill extends the Open Government Sunset Review repeal date for s. 112.324(2), F.S., from October 2, 2015, to October 2, 2018.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill takes effect on the same date that SB 2 takes effect. SB 2 is to take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates new public records and meetings exemptions, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates new public records and meetings exemptions, it includes a public necessity statement.

Single Subject

Section 24(c), Art. I of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain only exemptions from constitutional public records and open meetings requirements and provisions governing the enforcement of the section. This bill creates new public records and open meetings exemptions.

Lines 54-57 of the bill exempt any proceeding of the commission in which a determination regarding a referral is discussed or acted upon from s. 286.011, F.S., s. 24(b), Art. I of the Florida Constitution, and s. 120.525, F.S. Section 120.525, F.S., sets forth timing and content requirements for notices and agendas of public meetings, hearings, and workshops of agencies subject to ch. 120, F.S. It is unclear whether the inclusion of s. 120.525, F.S., in the exempted provisions constitutes a substantive provision.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Commission on Ethics, the Governor, the Department of Law Enforcement, and state attorneys may incur indeterminate administrative costs related to temporary maintenance of the confidentiality of referrals, related records, and records relating to preliminary investigations of referrals. The Commission on Ethics also may incur indeterminate administrative costs related to compliance with the public meetings exemption for proceedings relating to referrals. Any such indeterminate administrative costs would likely be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is linked to Senate Bill 2.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 6, 2013:

The CS differs from the original bill in that it:

- Does not amend a substantive current law restriction on times in which an ethics complaint may be filed or an intent to file such complaint may be disclosed.
- Clarifies that the current public meetings exemption relating to possible ethics violations and the public meetings exemption for referrals of possible ethics violations created by the bill apply only to *those portions of* proceedings at which confidential and exempt information is discussed.
- Clarifies that referrals are confidential and exempt when held by *a* state attorney, not by state attorneys in the plural.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Ethics and Elections

582-00925-13

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A bill to be entitled

An act relating to public records and meetings; amending s. 112.324, F.S.; creating an exemption from public records requirements for written referrals and related records held by the Commission on Ethics, the Governor, the Department of Law Enforcement, or state attorneys; creating an exemption for records relating to a preliminary investigation held by the Commission on Ethics; creating an exemption from public meetings requirements for proceedings of the Commission on Ethics in which the referrals are discussed or acted upon; extending the period in which the disclosure of the intent to file or the filing of a complaint against a candidate is prohibited; providing an exception; prohibiting the disclosure of the intent to file or the filing of a referral against a candidate on the day of an election or within a specified time period immediately preceding such election; providing an exception; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations; public

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

582-00925-13

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records and meeting exemptions.-

(2) (a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or state attorneys, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c)(b) Any proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from the provisions of s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e)(e) The exemptions in paragraphs (a)-(d) ~~(a)~~ and ~~(b)~~

Page 2 of 4

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582-00925-13

20134

59 apply until:

60 1. The complaint is dismissed as legally insufficient;
61 ~~until~~

62 2. The alleged violator requests in writing that such
63 records and proceedings be made public;

64 3. The commission determines that it will not investigate
65 the referral; or until

66 4. The commission, a Commission on Ethics and Public Trust,
67 or a county or municipality that has established such local
68 investigatory process determines, based on such investigation,
69 whether probable cause exists to believe that a violation has
70 occurred.

71 (f) In no event shall A complaint or referral under this
72 part against a candidate in any general, special, or primary
73 election may not be filed nor may ~~or~~ any intention of filing
74 such a complaint or referral be disclosed on the day of any such
75 election or within the 30 5 days immediately preceding the date
76 of the election, unless the complaint or referral is based upon
77 personal knowledge or information other than hearsay.

78 (g) ~~(d)~~ This subsection is subject to the Open Government
79 Sunset Review Act in accordance with s. 119.15 and shall stand
80 repealed on October 2, 2018 2015, unless reviewed and saved from
81 repeal through reenactment by the Legislature.

82 Section 2. (1) The Legislature finds that it is a public
83 necessity that written referrals and records relating to such
84 referrals held by the Commission on Ethics or its agents, the
85 Governor, the Department of Law Enforcement, or state attorneys,
86 and records relating to any preliminary investigation of such
87 referrals held by the Commission on Ethics or its agents, be

582-00925-13

20134

88 confidential and exempt from public records requirements until
89 the commission determines that it will not investigate the
90 referral, until the alleged violator requests in writing that
91 such records be made public, or until it is determined by the
92 commission based upon a preliminary investigation of the
93 referral whether probable cause exists to believe that a
94 violation has occurred. This exemption is necessary because the
95 release of such information could potentially be defamatory to
96 an individual under investigation, cause unwarranted damage to
97 the reputation of such individual, or significantly impair the
98 integrity of the investigation.

99 (2) The Legislature also finds that it is a public
100 necessity that the proceedings of the Commission on Ethics at
101 which a determination regarding a referral is discussed or acted
102 upon be exempt from public meetings requirements until the
103 commission determines that it will not investigate the referral,
104 until the alleged violator requests in writing that such
105 proceedings be made public, or until it is determined by the
106 Commission on Ethics, based on a preliminary investigation of
107 the referral, whether probable cause exists to believe that a
108 violation has occurred. This exemption is necessary because the
109 release of such information could potentially be defamatory to
110 an individual under investigation, cause unwarranted damage to
111 the reputation of such individual, or significantly impair the
112 integrity of the investigation.

113 Section 3. This act shall take effect on the same date that
114 SB 2 or similar legislation takes effect, if such legislation is
115 adopted in the same legislative session or an extension thereof
116 and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: PCS/SB 458 (427674)

INTRODUCER: Committee on Governmental Oversight and Accountability

SUBJECT: Firefighter and Police Pension Plans

DATE: February 4, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Pre-meeting
2.			CA	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/>	Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/>	Technical amendments were recommended
	<input type="checkbox"/>	Amendments were recommended
	<input type="checkbox"/>	Significant amendments were recommended

I. Summary:

PCS/SB 458 (427674) substantially amends provisions specifying how insurance premium tax revenues must be used in police and firefighter pension plans. The bill generally requires plan sponsors to fund the plans as they were required to do before an August 2012 reinterpretation of chapters 175 and 185, F.S., by the Department of Management Services. Plan benefits in existence in 1999 must be paid by the amount of premium tax revenues the plan sponsors received in 1997. Plans less than 80% funded must use 75% of their post-2012 increase in premium tax revenues, and accumulated premium tax revenues, to pay the plans actuarial deficiency. The other 25% of the post-2012 increase must fund defined contribution benefits. Plans funded greater than 80% must use all the post-2012 increase in premium tax revenues for defined contribution benefits. The increase in additional premium tax revenues between 1997 and 2012 must be used to fund any chapter minimum benefits that were not included in the base benefits of the plan, and any extra benefits that were added after March 12, 1999.

The bill also clarifies that a maximum of 300 hours of overtime may be included for purposes of calculating municipal police pension plan benefits.

This bill substantially amends sections 175.032, 175.071, 175.091, 175.351, 185.02, 185.06, 185.07, and 185.35 of the Florida Statutes.

II. Present Situation:

The “Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund” Acts

The Marvin B. Clayton Firefighters’ and Police Officers’ Pension Trust Fund Acts¹ declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters’ and police officers’ pension trust funds.²

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive to cities—access to premium tax revenues—to encourage the establishment of firefighter retirement plans. Fourteen years later, the Legislature enacted chapter 185, F.S., which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”); employee contributions; other revenue sources; and mandatory payments by the city of the normal cost of the plan.³ To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division of Retirement (“division”) in the Department of Management Services (DMS), but day-to-day operational control rests with local boards of trustees. Most firefighters and police officers participate in these plans. If the division deems that a firefighter or police pension plan created pursuant to chapters 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

The Firefighters’ Pension Trust Fund of each municipality or special fire control district is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district.⁴ It is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.⁵ In 2011, premium tax distributions to municipalities and special fire districts from the Firefighters’ Pension Trust Fund amounted to \$71.7 million.⁶

The Police Officers’ Retirement Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the

¹ See chapters 175 and 185, F.S.

² See ss. 175.021(1) and 185.01(1), F.S.

³ Section 175.091(1)(a), F.S.

⁴ Section 175.101(1), F.S.

⁵ See s. 175.121, F.S.

⁶ Division of Management Services, *Municipal Police Officers’ and Firefighters’ Retirement Forms: Facts and Figures Premium Tax Distribution History Firefighters*, available online at: https://www.rol.frs.state.fl.us/forms/Fire_2011.pdf (last visited on December 19, 2012).

boundaries of the municipality.⁷ Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the DOR, and the net proceeds are transferred to the appropriate fund at the division.⁸ In 2011, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$59.6 million.⁹

Chapters 175 and 185, F.S., specify certain "minimum benefits" that must be provided in firefighter and police plans,¹⁰ summarized in relevant part below:

Benefit	Description of minimum level
Retirement Benefit	2% x average final compensation x years of creditable service
Average Final Compensation (AFC)	Average annual compensation of highest 5 years of last 10 years of service
Vesting	10 years
Normal Retirement Age	Age 55 with 10 years of creditable service or Age 52 with 25 years of service
Early Retirement	Age 50 with 10 years of service Retirement benefit is reduced 3 percent for each year prior to reaching normal retirement age.
Earnings	Police = total cash remuneration Fire = fixed monthly compensation
Death Benefits	Prior to vesting - beneficiary receives employee contributions without interest earnings Vested - beneficiary receives benefit based on early or normal retirement benefits, whichever are applicable Post-retirement - beneficiary receives benefit based on retirement benefit option selected by member at time of retirement
Disability Benefits	Eligibility - no service requirement for in line of duty disability; 10 years of service for non service related disability Benefits - no less than 25 percent of average monthly earnings if non-service related; no less than 42 percent of average monthly earnings if service related

⁷ See s. 185.08, F.S.

⁸ See s. 185.10, F.S.

⁹ Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2011.pdf (last visited on December 19, 2012).

¹⁰ Sections 175.162 and 185.16, F.S.

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans, except the local law plans established by the cities of Jacksonville, Coral Gables, and Miami.¹¹ All pension plans falling under these chapters were required to meet the specific “minimum benefit” standards. The law required that insurance premium tax revenues, over the amount received for calendar year 1997, be used to provide additional or “extra benefits” in firefighter and police officer pension plans. The term “extra benefits” means benefits in addition to or greater than those provided to general employees of the municipality, and in addition to those in existence for firefighters and police officers on March 12, 1999.¹²

Until August 2012, the division had consistently interpreted the law to require that premium tax revenues be used first to meet any minimum benefit requirements and those other pension benefits that were in place on March 12, 1999. Once the plan was in compliance with the minimum benefits requirements, any additional premium tax revenues had to be used in their entirety to provide extra benefits. Plans were not permitted to reduce pension benefits below the minimum benefits level or the level of pension benefits in effect on March 12, 1999, if greater.

Recent Interpretation

In response to a letter from the City of Naples in August 2012, the division advised that its ongoing interpretation of s. 185.35(2), F.S., “appears inaccurate.” The division was asked, in essence, whether a city that negotiated and mutually agreed with its police officers to reduce benefits below levels in place on March 12, 1999, would jeopardize its premium tax revenues. In its new interpretation, the division advised that for local law plans in effect on October 1, 1998, the law compels the plan to provide chapter minimum benefits only to the extent that those benefits can be funded with “additional premium tax revenues.” So, for local law plans in effect on October 1, 1998, chapter minimum benefits must be provided only to the extent that they can be funded with premium tax revenues received in excess of the amount received for calendar year 1997.

Under the new interpretation, *it appears* that the following things are true:

- A plan sponsor may redirect, at its discretion, its pre-1997 premium tax revenues from funding minimum pension benefits to funding other non-pension retirement benefits;
- The plan’s pension benefits could be reduced to the level that can be funded solely by those additional premium tax revenues received in excess of the 1997 level;
- A plan sponsor could reduce its mandatory contribution it was previously making to the plan to fund minimum benefits and redirect those monies to other municipal purposes; and
- Post-1997 insurance premium tax revenues used previously to fund “extra benefits” would be used to fund the minimum benefits.

The division has subsequently provided this new interpretation to other inquiring cities, on a case by case basis. DMS has not adopted this new interpretation as a rule, nor its previous entirely different interpretation of the exact same statutory language.

¹¹ Sections 175.351(3) and 185.35(3), F.S.

¹² See ss. 175.351 and 185.35, F.S.

Definition of Salary in Municipal Police Pension Plans

A 300 hour cap on the amount of overtime hours to be included in the calculation of retirement benefits was added to ss. 112.66, 175.032, and 185.02, F.S., by SB 1128 in 2011. The provisions for general public retirement systems (Chapter 112, F.S.) and firefighter pensions (Chapter 175, F.S.) did not have existing stipulations allowing any overtime hours to be included in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before amendment by SB 1128:

“Compensation” or “salary” means the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

After amendment, the section reads as follows:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

The pre-SB 1128 provision set the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The post-SB 1128 language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. After the effective date of SB 1128, the DMS Division of Retirement appeared to take the position that SB 1128 did not *replace* the floor with a cap, but supplemented the 300 floor with a 300 hour cap. In other words, the employer would have had to include at least 300 hours of overtime in the calculation, but could not include more than 300 hours. Subsequently, however, the division has taken the

position that the amount of overtime hours that may be included when calculating retirement benefits may be anywhere from 0 to 300 hours.¹³

III. Effect of Proposed Changes:

Use of Insurance Premium Tax Revenues

The bill substantially changes how insurance premium tax revenues must be used in the funding of police and firefighter pension plans in Chapter 175 and 185, Florida Statutes.

The bill amends parallel provisions in Chapters 175 and 185, F.S., and specifies that in order to receive insurance premium tax revenues, the premium tax revenues must be used as follows:

- The amount of premium tax revenues received in 1997 must be used to fund the benefits in existence on March 12, 1999.
- Premium tax revenues in excess of the amount received in 2012, and any accumulations of additional premium tax revenues that have not been applied to fund extra benefits must be used as follows:
 - If the plan is less than 80% funded, then
 - 75% of the revenues must be used to pay actuarial deficiencies; and
 - 25% of the revenues must fund defined contribution benefits.
 - If the plan is 80% or greater than funded, then all the revenues must be used for defined contribution benefits.
- The increase in additional premium tax revenues between 1997 and 2012 must be used to fund any chapter minimum benefits that were not included in the base benefits of the plan, and any extra benefits that were added after March 12, 1999.
- Premium tax revenues may not fund new defined benefits after March 1, 2013.
- Extra benefits may be reduced, if the plan continues to meet the base benefits of the plan and minimum chapter standards. Of the plan sponsor's mandatory contribution freed up by reducing extra benefits, 25% must be used to fund actuarial deficiencies.

The bill also requires plan sponsors to create defined contribution plan components within their plans by October 1, 2013. Plans created by special act of the Legislature have until July 1, 2014, to create a defined contribution component.

300 Hour Cap

The bill amends s. 185.02(4), F.S., to delete the sentence that states: "A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year."

Deleting this sentence should clarify that the definition has a maximum cap of 300 hours, with no required minimum, consistent with a recent interpretation by the division, as it applies to the inclusion of overtime hours in the calculation of police retirement benefits.

¹³ Letter from the DMS Division of Retirement to City of Largo, dated April 4, 2012, on file with the Committee on Governmental Oversight and Accountability.

Conforming Changes

Sections 2 and 6 amend sections 175.071 and 185.06, F.S., to make conforming changes.

Important State Interest

Section 9 provides that the Legislature determines that the bill fulfills an important state interest as related to public pension plans.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 9 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

The bill allows all plan sponsors of pension plans created pursuant to chapters 175 and 185, F.S., to reduce extra benefits to either chapter minimums, or the base benefits of the plans. The bill requires that 25% of the funds the plan sponsor could potentially “save” by rolling back extra benefits must be used to fund the plan’s actuarial deficiency. Since the provisions of the bill apply to cities and special fire control districts alike, the expenditures required by the bill, if any, are required by all persons similarly situated.

Under this analysis, the bill may be exempt from the requirements of section (18) of Article VII of the State Constitution if the bill has an insignificant fiscal impact on cities and counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill should reduce local police and firefighter plans' long term unfunded liabilities. The overall costs or savings associated with the bill are indeterminate, since each of the approximately 500 plans affected by the bill has a different funded status.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS (427674) by Committee on Governmental Oversight and Accountability:

The differences between how the proposed committee substitute amends chapters 175 and 185, F.S., and how SB 458 does so, are as follows:

- The PCS does not include a provision in the bill that would require plan sponsors to continue funding the plans at 2013 levels until the plans are fully funded.
- The bill largely deleted provisions in the chapters that led to the recent DMS reinterpretation; the PCS keeps much of the existing language in the chapters, and adds additional requirements.
- The PCS generally requires plan sponsors to fund the plans as they were required to do before the August 2012 reinterpretation by DMS, with the additional requirement that plans less than 80% funded must use 75% of their post-2012 increase in premium tax revenues, and accumulated premium tax revenues, to pay the plans actuarial deficiency. The other 25% of the post-2012 increase must fund defined contribution benefits. Plans funded greater than 80% must use all the post-2012 increase in premium tax revenues for defined contribution benefits.

- The PCS reinstates an existing statutory exclusion applicable to three cities that was inadvertently deleted in the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 76 - 576
and insert:

(6) "Defined contribution plan" means the component of a local law plan to which deposits are made to provide benefits for firefighters, or for firefighters and police officers if both are included, under this chapter. Such component is an element of a local law plan and exists in conjunction with the defined benefit component that meets the minimum benefits and minimum standards of this chapter. The retirement benefits of the defined contribution plan shall be provided through member-



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directed investments, in accordance with s. 401(a), s. 401(k),
or s. 457 of the Internal Revenue Code and related regulations.

~~(12)(11)~~ "Local law plan" means a retirement defined
~~benefit pension plan~~, which includes both a defined benefit plan
component and a defined contribution plan component, for
firefighters, or for firefighters or police officers if both are
~~where~~ included, as described in s. 175.351, established by
municipal ordinance, special district resolution, or special act
of the Legislature, which ~~enactment~~ sets forth all plan
provisions. Local law plan provisions may vary from the
provisions of this chapter if the, ~~provided that required~~
minimum benefits and minimum standards of this chapter are met.
However, any such variance must ~~shall~~ provide a greater benefit
for firefighters. Actuarial valuations of local law plans shall
be conducted by an enrolled actuary as provided in s.
175.261(2).

~~(18)(17)~~ "Supplemental plan" means a plan to which deposits
are made to provide extra benefits for firefighters, or for
firefighters and police officers if both are ~~where~~ included,
under this chapter. Such a plan is an element of a local law
plan and exists in conjunction with a defined benefit component
~~plan~~ that meets the minimum benefits and minimum standards of
this chapter.

Section 2. Paragraph (b) of subsection (7) of section
175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.—For
any municipality, special fire control district, chapter plan,
local law municipality, local law special fire control district,
or local law plan under this chapter:



436070

(7) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(b) Employ an independent enrolled actuary, as defined in s. 175.032(7), at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's or special district's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

Section 3. Section 175.351, Florida Statutes, is amended to read:

175.351 Municipalities and special fire control districts having their own pension plans for firefighters. ~~For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter,~~ In order for a municipality or municipalities and special fire control district that has its districts with their own pension plan plans for firefighters, or for firefighters and police officers if both are included, to participate in the distribution of the tax fund established under pursuant to s. 175.101, a local law plan and its plan sponsor plans must meet the minimum benefits and minimum standards set forth in this chapter.

(1) As used in this section, the term:

(a) "Additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed base premium tax revenues.

(b) "Base benefits" means those benefits in existence for



436070

71 firefighters on March 12, 1999.

72 (c) "Base premium tax revenues" means revenues received by
73 a municipality or special fire control district pursuant to s.
74 175.121 equal to the amount of such revenues received for
75 calendar year 1997.

76 (d) "Extra benefits" means benefits in addition to or
77 greater than those provided to general employees of the
78 municipality and in addition to those in existence for
79 firefighters on March 12, 1999.

80 (2)(1) If a municipality has a pension plan for
81 firefighters, or a pension plan for firefighters and police
82 officers if both are included, which in the opinion of the
83 division meets the minimum benefits and minimum standards set
84 forth in this chapter, the board of trustees of the pension
85 plan, as approved by a majority of firefighters of the
86 municipality, must may:

87 (a) place the income from the premium tax in s. 175.101 in
88 such pension plan for the sole and exclusive use of its
89 firefighters, or for firefighters and police officers if both
90 are included, where it shall become an integral part of that
91 pension plan and shall be used to fund benefits for firefighters
92 as follows:

93 (a) The base premium tax revenues must be used to fund base
94 benefits.

95 (b) Additional premium tax revenues must be used to fund:

96 1. Any minimum benefits that were not included in the base
97 benefits; and

98 2. Any extra benefits that were added after March 12, 1999,
99 except as provided in subsection (4) to pay extra benefits to



436070

~~the firefighters included in that pension plan; or~~

~~(b) Place the income from the premium tax in s. 175.101 in a separate supplemental plan to pay extra benefits to firefighters, or to firefighters and police officers if included, participating in such separate supplemental plan.~~

(3) Insurance premium tax revenues may not be used to fund benefits provided in a defined benefit plan which were not provided by the plan as of March 1, 2013.

(4) If a plan offers extra benefits, such benefits may be reduced if the plan continues to meet the base benefits of the plan and the minimum standards set forth in this chapter. Fifty percent of the amount of insurance premium tax revenues previously used to fund extra benefits before the reduction must be used as additional contributions to fund the plan's actuarial deficiency, and the remaining 50 percent must be used to fund the base benefits.

(5)(2) The premium tax provided by this chapter shall in all cases be used in its entirety to provide retirement extra benefits to firefighters, or to firefighters and police officers if both are included. However, local law plans in effect on October 1, 1998, must comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 175.162(2)(a). If a plan is in compliance with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they must be used to provide extra benefits. Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter. For the purpose of this chapter, the term:



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~~(a) "Additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed that amount received for calendar year 1997.~~

~~(b) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters on March 12, 1999.~~

~~(6)~~⁽³⁾ A retirement plan or amendment to a retirement plan may not be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. Such proposed plan or proposed plan change may not be adopted without the approval of the municipality, special fire control district, or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division before the last public hearing thereon. Such statement must also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation before May 27, 1939, are deemed to meet the minimum benefits and minimum standards only in this chapter.

~~(7)~~⁽⁴⁾ Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) A local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence



436070

on March 12, 1999.

(b) Section 175.061(1)(b) does not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on December 1, 2000.

~~(c) The election set forth in paragraph (1)(b) is deemed to have been made.~~

~~(8)(5)~~ The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing, and copies made available to the participants and to the general public.

Section 4. Present subsections (7) through (16) of section 185.02, Florida Statutes, are renumbered as subsections (8) through (17), respectively, a new subsection (7) is added to that section, and subsection (4), paragraph (c) of subsection (5), and present subsections (10) and (15) of that section are amended, to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(4) "Compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including "overtime" paid by the primary employer to a police officer for services



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rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. ~~A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year.~~ For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

(a) Any retirement trust fund or plan that meets the requirements of this chapter does not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he or she were not participating in such program and ~~shall be~~ treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for



436070

that plan year may not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation, as amended by the Omnibus Budget Reconciliation Act of 1993, which limitation of \$150,000 shall be adjusted as required by federal law for qualified government plans and ~~shall be~~ further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member before the first plan year beginning on or after January 1, 1996, the limitation on compensation may not be less than the maximum compensation amount that was allowed to be taken into account under the plan ~~as~~ in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

(5) "Creditable service" or "credited service" means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

(c) Credited service under this chapter shall be provided only for service as a police officer, ~~as defined in subsection (11),~~ or for military service and may not include credit for any other type of service. A municipality ~~may~~, by local ordinance, may provide for the purchase of credit for military service occurring before employment as well as prior service as a police officer for some other employer as long as the police officer is not entitled to receive a benefit for such other prior service as a police officer. For purposes of determining credit for



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prior service, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service as long as such service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement as provided under chapter 943 or the police officer provides proof to the board of trustees that such service is equivalent to the service required to meet the definition of a police officer under subsection (12) ~~(11)~~.

(7) "Defined contribution plan" means the component of a local law plan to which deposits are made to provide benefits for police officers, or for police officers and firefighters if both are included. Such component is an element of a local law plan and exists in conjunction with the defined benefit component that meets the minimum benefits and minimum standards of this chapter. The retirement benefits of the defined contribution plan shall be provided through member-directed investments, in accordance with s. 401(a), s. 401(k), or s. 457 of the Internal Revenue Code and related regulations.

(11) ~~(10)~~ "Local law plan" means a retirement defined benefit pension plan, which includes both a defined benefit plan component and a defined contribution plan component, for police officers, or for police officers and firefighters if both are, where included, as described in s. 185.35, established by municipal ordinance or special act of the Legislature, which enactment sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter if the, provided that required minimum benefits and minimum standards of this chapter are met. However, any such variance must shall provide a greater benefit for police officers. Actuarial



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valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 185.221(2)(b).

~~(15)~~ (16) "Supplemental plan" means a plan to which deposits of the premium tax moneys as provided in s. 185.08 are made to provide extra benefits to police officers, or police officers and firefighters if both are ~~where~~ included, under this chapter. Such a plan is an element of a local law plan and exists in conjunction with a defined benefit component plan ~~plan~~ that meets the minimum benefits and minimum standards of this chapter.

Section 5. Paragraph (b) of subsection (6) of section 185.06, Florida Statutes, is amended to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(6) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(b) Employ an independent enrolled actuary, as defined in s. 185.02~~(8)~~, at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

Section 6. Section 185.35, Florida Statutes, is amended to read:

185.35 Municipalities having their own pension plans for police officers. ~~For any municipality, chapter plan, local law municipality, or local law plan under this chapter,~~ In order for



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a municipality ~~municipalities~~ with its ~~their~~ own retirement plan
~~pension plans~~ for police officers, or for police officers and
firefighters if both are included, to participate in the
distribution of the tax fund established under ~~pursuant to~~ s.
185.08, a local law plan and its plan sponsor plans must meet
the minimum benefits and minimum standards set forth in this
chapter:

(1) As used in this section, the term:

(a) "Additional premium tax revenues" means revenues
received by a municipality pursuant to s. 185.10 which exceed
base premium tax revenues.

(b) "Base benefits" means benefits in existence for police
officers on March 12, 1999.

(c) "Base premium tax revenues" means revenues received by
a municipality pursuant to s. 185.10 equal to the amount of such
revenues received for calendar year 1997.

(d) "Extra benefits" means benefits in addition to or
greater than those provided to general employees of the
municipality and in addition to those in existence for police
officers on March 12, 1999.

(2) ~~(1)~~ If a municipality has a retirement ~~pension~~ plan for
police officers, or for police officers and firefighters if both
are included, which, in the opinion of the division, meets the
minimum benefits and minimum standards set forth in this
chapter, the board of trustees of the pension plan, as approved
by a majority of police officers of the municipality, must ~~may~~:

~~(a)~~ place the income from the premium tax in s. 185.08 in
such ~~pension~~ plan for the sole and exclusive use of its police
officers, or its police officers and firefighters if included,



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where it shall become an integral part of that ~~pension~~ plan and
~~shall~~ be used to fund benefits for police officers as follows:

(a) The base premium tax revenues must be used to fund base
benefits.

(b) Additional premium tax revenues must be used to fund:

1. Any minimum benefits that were not included in the base
benefits; and

2. Any extra benefits that were added after March 12, 1999,
except as provided in subsection (4) ~~pay extra benefits to the
police officers included in that pension plan; or~~

~~(b) May place the income from the premium tax in s. 185.08
in a separate supplemental plan to pay extra benefits to the
police officers, or police officers and firefighters if
included, participating in such separate supplemental plan.~~

(3) Insurance premium tax revenues may not be used to fund
benefits provided in a defined benefit plan which were not
provided by the plan as of March 1, 2013.

(4) If a plan offers extra benefits, such benefits may be
reduced if the plan continues to meet the base benefits of the
plan and the minimum standards set forth in this chapter. Fifty
percent of the amount of insurance premium tax revenues
previously used to fund extra benefits before the reduction must
be used as additional contributions to fund the plan's actuarial
deficiency, and the remaining 50 percent must be used to fund
the base benefits.

(5)~~(2)~~ The premium tax provided by this chapter shall in
all cases be used in its entirety to provide extra benefits to
police officers, or to police officers and firefighters if both
are included. ~~However, local law plans in effect on October 1,~~



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1998, ~~must comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 185.16(2). If a plan is in compliance with such minimum benefit provisions, as subsequent additional tax revenues become available, they shall be used to provide extra benefits.~~ Local law plans created by special act before May 27, 1939, shall be deemed to comply with this chapter. ~~For the purpose of this chapter, the term:~~

~~(a) "Additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed the amount received for calendar year 1997.~~

~~(b) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for police officers on March 12, 1999.~~

(6)~~(3)~~ A retirement plan or amendment to a retirement plan may not be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. Such proposed plan or proposed plan change may not be adopted without the approval of the municipality or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division before the last public hearing thereon. Such statement must also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other



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provision, only those local law plans created by special act of
legislation before May 27, 1939, are deemed to meet the minimum
benefits and minimum standards only in this chapter.

(7)~~(4)~~ Notwithstanding any other provision, with respect to
any supplemental plan municipality:

(a) Section 185.02(4)(a) does not apply, and a local law
plan and a supplemental plan may continue to use their
definition of compensation or salary in existence on March 12,
1999.

(b) A local law plan and a supplemental plan must continue
to be administered by a board or boards of trustees numbered,
constituted, and selected as the board or boards were numbered,
constituted, and selected on December 1, 2000.

~~(c) The election set forth in paragraph (1)(b) is deemed to
have been made.~~

(8)~~(5)~~ The retirement plan setting forth the benefits and
the trust agreement, if any, covering the duties and
responsibilities of the trustees and the regulations of the
investment of funds must be in writing and copies made available
to the participants and to the general public.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 7 - 36

and insert:

reference; amending s. 175.351, F.S., relating to
municipalities and special fire control districts that
have their own pension plans and want to participate
in the distribution of a tax fund; revising



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419 definitions; revising how income from the premium tax
420 must be used; amending s. 185.02, F.S.; revising
421 definitions to conform to changes made by the act and
422 adding a definition of the term "defined contribution
423 plan"; deleting a provision allowing a local law plan
424 to limit the amount of overtime payments which can be
425 used for retirement benefit calculations; amending s.
426 185.06, F.S.; conforming a cross-reference; amending
427 s. 185.35, F.S., relating to municipalities that have
428 their own pension plans for police officers and want
429 to participate in the distribution of a tax fund;
430 revising definitions; revising how income from the
431 premium tax must be used;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 290 and 291
insert:

(10) Notwithstanding any other provision of law, with respect to any plan subject to this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative, or, if there is no collective bargaining representative, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income for retirement benefits from the premium tax provided pursuant to this chapter, the



213416

provisions of the agreement shall be deemed to comply with this chapter for all purposes.

Between lines 576 and 577
insert:

(10) Notwithstanding any other provision of law, with respect to any plan subject to this chapter, if the municipality and the plan members' collective bargaining representative, or, if there is no collective bargaining representative, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income for retirement benefits from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for all purposes.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete line 19
and insert:

by a certain date; providing that certain plan agreements between a municipality or district and the plan members are deemed to comply with this chapter; amending s. 185.02, F.S.; revising

Delete line 36
and insert:

contribution plan in place by a certain date; providing that certain plan agreements between a municipality and the plan members are deemed to comply



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with this chapter;



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585-01499C-13

Proposed Committee Substitute by the Committee on Governmental
Oversight and Accountability

A bill to be entitled

An act relating to firefighter and police officer
pension plans; amending s. 175.032, F.S.; revising
definitions to conform to changes made by the act and
adding a definition for "defined contribution plan";
amending s. 175.071, F.S.; conforming a cross-
reference; amending s. 175.091, F.S.; providing for an
additional mandatory payment by the municipality or
special fire control district to the firefighters'
pension trust fund; amending s. 175.351, F.S.,
relating to municipalities and special fire control
districts that have their own pension plans and want
to participate in the distribution of a tax fund;
revising definitions; revising how income from the
premium tax must be used; requiring certain tax
revenues to be placed in a defined contribution plan
and used to fund special benefits; requiring plan
sponsors to have a defined contribution plan in place
by a certain date; amending s. 185.02, F.S.; revising
definitions to conform to changes made by the act and
adding a definition for "defined contribution plan";
deleting a provision allowing a local law plan to
limit the amount of overtime payments which can be
used for retirement benefit calculations; amending s.
185.06, F.S.; conforming a cross-reference; amending
s. 185.07, F.S.; providing for an additional mandatory
payment by the municipality to the police officers'



427674

585-01499C-13

retirement trust fund; amending s. 185.35, F.S.,
relating to municipalities that have their own pension
plans for police officers and want to participate in
the distribution of a tax fund; revising definitions;
revising how income from the premium tax must be used;
requiring certain tax revenues to be placed in a
defined contribution plan and used to fund special
benefits; requiring plan sponsors to have a defined
contribution plan in place by a certain date;
providing a declaration of important state interest;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (6) through (18) of section
175.032, Florida Statutes, are renumbered as subsections (7)
through (19), respectively, a new subsection (6) is added to
that section, and paragraph (c) of subsection (4) and present
subsections (11) and (17) of that section are amended, and to
read:

175.032 Definitions.—For any municipality, special fire
control district, chapter plan, local law municipality, local
law special fire control district, or local law plan under this
chapter, the following words and phrases have the following
meanings:

(4) "Creditable service" or "credited service" means the
aggregate number of years of service, and fractional parts of
years of service, of any firefighter, omitting intervening years
and fractional parts of years when such firefighter may not have



427674

585-01499C-13

57 been employed by the municipality or special fire control
58 district, subject to the following conditions:

59 (c) Credited service under this chapter shall be provided
60 only for service as a firefighter, ~~as defined in subsection (8),~~
61 or for military service and does not include credit for any
62 other type of service. A municipality ~~may~~, by local ordinance,
63 or a special fire control district ~~may~~, by resolution, may
64 provide for the purchase of credit for military service prior to
65 employment as well as for prior service as a firefighter for
66 some other employer as long as a firefighter is not entitled to
67 receive a benefit for such prior service as a firefighter. For
68 purposes of determining credit for prior service as a
69 firefighter, in addition to service as a firefighter in this
70 state, credit may be given for federal, other state, or county
71 service if the prior service is recognized by the Division of
72 State Fire Marshal as provided under chapter 633, or the
73 firefighter provides proof to the board of trustees that his or
74 her service is equivalent to the service required to meet the
75 definition of a firefighter under subsection (9) (8).

76 (6) "Defined contribution plan" means the component of a
77 local law plan to which deposits are made to provide special
78 benefits for firefighters, or for firefighters and police
79 officers if both are included, under this chapter. Such
80 component is an element of a local law plan and exists in
81 conjunction with the defined benefit component that meets the
82 minimum benefits and minimum standards of this chapter. The
83 retirement benefits of the defined contribution plan shall be
84 provided through member-directed investments, in accordance with
85 ss. 401(a), 401(k), or 457 of the Internal Revenue Code and



427674

585-01499C-13

86 related regulations.

87 (12)(11) "Local law plan" means a retirement defined
88 benefit pension plan, which includes both a defined benefit plan
89 component and a defined contribution plan component, for
90 firefighters, or for firefighters or police officers if both are
91 where included, as described in s. 175.351, established by
92 municipal ordinance, special district resolution, or special act
93 of the Legislature, which enactment sets forth all plan
94 provisions. Local law plan provisions may vary from the
95 provisions of this chapter if the, provided that required
96 minimum benefits and minimum standards of this chapter are met.
97 However, any such variance must shall provide a greater benefit
98 for firefighters. Actuarial valuations of local law plans shall
99 be conducted by an enrolled actuary as provided in s.
100 175.261(2).

101 (18)(17) "Supplemental plan" means a plan to which deposits
102 are made to provide extra benefits for firefighters, or for
103 firefighters and police officers if both are where included,
104 under this chapter. Such a plan is an element of a local law
105 plan and exists in conjunction with a defined benefit component
106 plan that meets the minimum benefits and minimum standards of
107 this chapter.

108 Section 2. Paragraph (b) of subsection (7) of section
109 175.071, Florida Statutes, is amended to read:

110 175.071 General powers and duties of board of trustees.—For
111 any municipality, special fire control district, chapter plan,
112 local law municipality, local law special fire control district,
113 or local law plan under this chapter:

114 (7) To assist the board in meeting its responsibilities



427674

585-01499C-13

under this chapter, the board, if it so elects, may:

(b) Employ an independent enrolled actuary, as defined in s. 175.032(7), at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's or special district's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

Section 3. Present paragraphs (e), (f), and (g) of subsection (1) of section 175.091, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection, to read:

175.091 Creation and maintenance of fund.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The firefighters' pension trust fund in each municipality and in each special fire control district shall be created and maintained in the following manner:

(e) By mandatory payment by the municipality or special fire control district of the amount specified in s. 175.351(4) if the long-term funded ratio of the plan is less than 80 percent as shown by the most recent valuation of the plan.

Nothing in this section shall be construed to require adjustment of member contribution rates in effect on the date this act becomes a law, including rates that exceed 5 percent of salary, provided that such rates are at least one-half of 1 percent of



427674

585-01499C-13

salary.

Section 4. Section 175.351, Florida Statutes, is amended to read:

175.351 Municipalities and special fire control districts having their own pension plans for firefighters.—~~For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter,~~ In order for a municipality or municipalities and special fire control district that has its districts with their own pension plan plans for firefighters, or for firefighters and police officers if both are included, to participate in the distribution of the tax fund established under pursuant to s. 175.101, a local law plan and its plan sponsor plans must meet the minimum benefits and minimum standards set forth in this chapter.

(1) As used in this section, the term:

(a) "Additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed base premium tax revenues.

(b) "Base benefits" means those benefits in existence for firefighters on March 12, 1999.

(c) "Base premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 equal to the amount of such revenues received for calendar year 1997.

(d) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters on March 12, 1999.



427674

585-01499C-13

173 (e) "Special benefits" means benefits provided in a defined
174 contribution plan.

175 (2)(1) If a municipality has a pension plan for
176 firefighters, or a pension plan for firefighters and police
177 officers if both are included, which in the opinion of the
178 division meets the minimum benefits and minimum standards set
179 forth in this chapter, the board of trustees of the pension
180 plan, as approved by a majority of firefighters of the
181 municipality, must may:

182 (a) place the income from the premium tax in s. 175.101 in
183 such pension plan for the sole and exclusive use of its
184 firefighters, or for firefighters and police officers if both
185 are included, where it shall become an integral part of that
186 pension plan and shall be used to fund benefits for firefighters
187 as follows:

188 (a) The base premium tax revenues must be used to fund base
189 benefits.

190 (b) Of the premium tax revenues received that are in excess
191 of the amount received for the 2012 calendar year, and any
192 accumulations of additional premium tax revenues that have not
193 been applied to fund extra benefits:

194 1. If the plan has a long-term funded ratio of less than 80
195 percent as shown by the most recent valuation of the plan:

196 a. Seventy-five percent must be used as additional
197 contributions to pay the plan's actuarial deficiency; and

198 b. Twenty-five percent must be placed in a defined
199 contribution plan to fund special benefits.

200 2. If the plan has a long-term funded ratio of 80 percent
201 or greater as shown by the most recent valuation of the plan,



427674

585-01499C-13

202 100 percent must be placed in a defined contribution plan to
203 fund special benefits.

204 (c) Additional premium tax revenues not described in
205 paragraph (b) must be used to fund:

206 1. Any minimum benefits that were not included in the base
207 benefits; and

208 2. Any extra benefits that were added after March 12, 1999,
209 except as provided in subsection (4) to pay extra benefits to
210 the firefighters included in that pension plan; or

211 (b) Place the income from the premium tax in s. 175.101 in
212 a separate supplemental plan to pay extra benefits to
213 firefighters, or to firefighters and police officers if
214 included, participating in such separate supplemental plan.

215 (3) Insurance premium tax revenues may not be used to fund
216 benefits provided in a defined benefit plan which were not
217 provided by the plan as of March 1, 2013.

218 (4) If a plan offers extra benefits, such benefits may be
219 reduced if the plan continues to meet the base benefits of the
220 plan and the minimum standards set forth in this chapter. The
221 amount of insurance premium tax revenues previously used to fund
222 extra benefits before the reduction must be used as provided in
223 subsection (2)(b). Twenty-five percent of the amount of any
224 mandatory contribution paid by the municipality or special fire
225 control district that were previously used to fund extra
226 benefits before the reduction must be used as additional
227 contributions as specified in s. 175.091 to fund the plan's
228 actuarial deficiency.

229 (5)(2) The premium tax provided by this chapter shall in
230 all cases be used in its entirety to provide retirement extra



427674

585-01499C-13

231 benefits to firefighters, or to firefighters and police officers
232 if ~~both are~~ included. ~~However, local law plans in effect on~~
233 ~~October 1, 1998, must comply with the minimum benefit provisions~~
234 ~~of this chapter only to the extent that additional premium tax~~
235 ~~revenues become available to incrementally fund the cost of such~~
236 ~~compliance as provided in s. 175.162(2)(a). If a plan is in~~
237 ~~compliance with such minimum benefit provisions, as subsequent~~
238 ~~additional premium tax revenues become available, they must be~~
239 ~~used to provide extra benefits. Local law plans created by~~
240 ~~special act before May 27, 1939, are deemed to comply with this~~
241 ~~chapter. For the purpose of this chapter, the term:~~

242 (a) ~~"Additional premium tax revenues" means revenues~~
243 ~~received by a municipality or special fire control district~~
244 ~~pursuant to s. 175.121 which exceed that amount received for~~
245 ~~calendar year 1997.~~

246 (b) ~~"Extra benefits" means benefits in addition to or~~
247 ~~greater than those provided to general employees of the~~
248 ~~municipality and in addition to those in existence for~~
249 ~~firefighters on March 12, 1999.~~

250 ~~(6)(3)~~ A retirement plan or amendment to a retirement plan
251 may not be proposed for adoption unless the proposed plan or
252 amendment contains an actuarial estimate of the costs involved.
253 Such proposed plan or proposed plan change may not be adopted
254 without the approval of the municipality, special fire control
255 district, or, where permitted, the Legislature. Copies of the
256 proposed plan or proposed plan change and the actuarial impact
257 statement of the proposed plan or proposed plan change shall be
258 furnished to the division before the last public hearing
259 thereon. Such statement must also indicate whether the proposed



427674

585-01499C-13

260 plan or proposed plan change is in compliance with s. 14, Art. X
261 of the State Constitution and those provisions of part VII of
262 chapter 112 which are not expressly provided in this chapter.
263 Notwithstanding any other provision, only those local law plans
264 created by special act of legislation before May 27, 1939, are
265 deemed to meet the minimum benefits and minimum standards only
266 in this chapter.

267 ~~(7)(4)~~ Notwithstanding any other provision, with respect to
268 any supplemental plan municipality:

269 (a) A local law plan and a supplemental plan may continue
270 to use their definition of compensation or salary in existence
271 on March 12, 1999.

272 (b) Section 175.061(1)(b) does not apply, and a local law
273 plan and a supplemental plan shall continue to be administered
274 by a board or boards of trustees numbered, constituted, and
275 selected as the board or boards were numbered, constituted, and
276 selected on December 1, 2000.

277 ~~(c) The election set forth in paragraph (1)(b) is deemed to~~
278 ~~have been made.~~

279 ~~(8)(5)~~ The retirement plan setting forth the benefits and
280 the trust agreement, if any, covering the duties and
281 responsibilities of the trustees and the regulations of the
282 investment of funds must be in writing, and copies made
283 available to the participants and to the general public.

284 (9) In addition to the defined benefit component of the
285 local law plan, each plan sponsor must have a defined
286 contribution plan component within the local law plan by October
287 1, 2013, or upon the creation date of a new participating plan.
288 However, the plan sponsor of any plan established by special act



427674

585-01499C-13

289 of the Legislature has until July 1, 2014, to create a defined
290 contribution component within the plan.

291 Section 5. Present subsections (7) through (16) of section
292 185.02, Florida Statutes, are renumbered as subsections (8)
293 through (17), respectively, a new subsection (7) is added to
294 that section, and subsection (4), paragraph (c) of subsection
295 (5), and present subsections (10) and (15) of that section are
296 amended, to read:

297 185.02 Definitions.—For any municipality, chapter plan,
298 local law municipality, or local law plan under this chapter,
299 the following words and phrases as used in this chapter shall
300 have the following meanings, unless a different meaning is
301 plainly required by the context:

302 (4) "Compensation" or "salary" means, for noncollectively
303 bargained service earned before July 1, 2011, or for service
304 earned under collective bargaining agreements in place before
305 July 1, 2011, the total cash remuneration including "overtime"
306 paid by the primary employer to a police officer for services
307 rendered, but not including any payments for extra duty or
308 special detail work performed on behalf of a second party
309 employer. ~~A local law plan may limit the amount of overtime~~
310 ~~payments which can be used for retirement benefit calculation~~
311 ~~purposes; however, such overtime limit may not be less than 300~~
312 ~~hours per officer per calendar year.~~ For noncollectively
313 bargained service earned on or after July 1, 2011, or for
314 service earned under collective bargaining agreements entered
315 into on or after July 1, 2011, the term has the same meaning
316 except that when calculating retirement benefits, up to 300
317 hours per year in overtime compensation may be included as



427674

585-01499C-13

318 specified in the plan or collective bargaining agreement, but
319 payments for accrued unused sick or annual leave may not be
320 included.

321 (a) Any retirement trust fund or plan that meets the
322 requirements of this chapter does not, solely by virtue of this
323 subsection, reduce or diminish the monthly retirement income
324 otherwise payable to each police officer covered by the
325 retirement trust fund or plan.

326 (b) The member's compensation or salary contributed as
327 employee-elective salary reductions or deferrals to any salary
328 reduction, deferred compensation, or tax-sheltered annuity
329 program authorized under the Internal Revenue Code shall be
330 deemed to be the compensation or salary the member would receive
331 if he or she were not participating in such program and ~~shall be~~
332 treated as compensation for retirement purposes under this
333 chapter.

334 (c) For any person who first becomes a member in any plan
335 year beginning on or after January 1, 1996, compensation for
336 that plan year may not include any amounts in excess of the
337 Internal Revenue Code s. 401(a)(17) limitation, as amended by
338 the Omnibus Budget Reconciliation Act of 1993, which limitation
339 of \$150,000 shall be adjusted as required by federal law for
340 qualified government plans and ~~shall be~~ further adjusted for
341 changes in the cost of living in the manner provided by Internal
342 Revenue Code s. 401(a)(17)(B). For any person who first became a
343 member before the first plan year beginning on or after January
344 1, 1996, the limitation on compensation may not be less than the
345 maximum compensation amount that was allowed to be taken into
346 account under the plan ~~as~~ in effect on July 1, 1993, which



427674

585-01499C-13

limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a) (17) (1991) .

(5) "Creditable service" or "credited service" means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

(c) Credited service under this chapter shall be provided only for service as a police officer, ~~as defined in subsection (11)~~, or for military service and may not include credit for any other type of service. A municipality ~~may~~, by local ordinance, may provide for the purchase of credit for military service occurring before employment as well as prior service as a police officer for some other employer as long as the police officer is not entitled to receive a benefit for such other prior service as a police officer. For purposes of determining credit for prior service, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service as long as such service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement as provided under chapter 943 or the police officer provides proof to the board of trustees that such service is equivalent to the service required to meet the definition of a police officer under subsection (12) (11).

(7) "Defined contribution plan" means the component of a local law plan to which deposits are made to provide special benefits for police officers, or for police officers and



427674

585-01499C-13

firefighters if both are included. Such component is an element of a local law plan and exists in conjunction with the defined benefit component that meets the minimum benefits and minimum standards of this chapter. The retirement benefits of the defined contribution plan shall be provided through member-directed investments, in accordance with ss. 401(a), 401(k), or 457 of the Internal Revenue Code and related regulations.

(11)(10) "Local law plan" means a retirement defined benefit pension plan, which includes both a defined benefit plan component and a defined contribution plan component, for police officers, or for police officers and firefighters if both are, where included, as described in s. 185.35, established by municipal ordinance or special act of the Legislature, which enactment sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter if they provided that required minimum benefits and minimum standards of this chapter are met. However, any such variance must shall provide a greater benefit for police officers. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 185.221(2) (b).

(16)(15) "Supplemental plan" means a plan to which deposits of the premium tax moneys as provided in s. 185.08 are made to provide extra benefits to police officers, or police officers and firefighters if both are where included, under this chapter. Such a plan is an element of a local law plan and exists in conjunction with a defined benefit component plan that meets the minimum benefits and minimum standards of this chapter.

Section 6. Paragraph (b) of subsection (6) of section 185.06, Florida Statutes, is amended to read:



427674

585-01499C-13

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(6) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(b) Employ an independent enrolled actuary, as defined in s. 185.02(8), at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

Section 7. Present paragraphs (e), (f), and (g) of subsection (1) of section 185.07, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection, to read:

185.07 Creation and maintenance of fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The municipal police officers' retirement trust fund in each municipality described in s. 185.03 shall be created and maintained in the following manner:

(e) By mandatory payment by the municipality of the amount specified in s. 185.35(4) if the long-term funded ratio of the plan is less than 80 percent as shown by the most recent valuation of the plan.

Nothing in this section shall be construed to require adjustment



427674

585-01499C-13

of member contribution rates in effect on the date this act becomes a law, including rates that exceed 5 percent of salary, provided that such rates are at least one-half of 1 percent of salary.

Section 8. Section 185.35, Florida Statutes, is amended to read:

185.35 Municipalities having their own pension plans for police officers.—~~For any municipality, chapter plan, local law municipality, or local law plan under this chapter,~~ In order for a municipality municipalities with its their own retirement plan pension plans for police officers, or for police officers and firefighters if both are included, to participate in the distribution of the tax fund established under pursuant to s. 185.08, a local law plan and its plan sponsor plans must meet the minimum benefits and minimum standards set forth in this chapter:

(1) As used in this section, the term:

(a) "Additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed base premium tax revenues.

(b) "Base benefits" means benefits in existence for police officers on March 12, 1999.

(c) "Base premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 equal to the amount of such revenues received for calendar year 1997.

(d) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for police officers on March 12, 1999.



427674

585-01499C-13

463 (e) "Special benefits" means benefits provided in a defined
464 contribution plan.

465 (2)(1) If a municipality has a retirement pension plan for
466 police officers, or for police officers and firefighters if both
467 are included, which, in the opinion of the division, meets the
468 minimum benefits and minimum standards set forth in this
469 chapter, the board of trustees of the pension plan, as approved
470 by a majority of police officers of the municipality, must may:

471 (a) place the income from the premium tax in s. 185.08 in
472 such pension plan for the sole and exclusive use of its police
473 officers, or its police officers and firefighters if included,
474 where it shall become an integral part of that pension plan and
475 shall be used to fund benefits for police officers as follows:

476 (a) The base premium tax revenues must be used to fund base
477 benefits.

478 (b) Of the premium tax revenues received that are in excess
479 of the amount received for the 2012 calendar year, and any
480 accumulations of additional premium tax revenues that have not
481 been applied to fund extra benefits:

482 1. If the plan has a long-term funded ratio of less than 80
483 percent as shown by the most recent valuation of the plan:

484 a. Seventy-five percent must be used as additional
485 contributions to pay the plan's actuarial deficiency; and

486 b. Twenty-five percent must be placed in a defined
487 contribution plan to fund special benefits.

488 2. If the plan has a long-term funded ratio of 80 percent
489 or greater as shown by the most recent valuation of the plan,
490 100 percent must be placed in a defined contribution plan to
491 fund special benefits.



427674

585-01499C-13

492 (c) Additional premium tax revenues not described in
493 paragraph (b) must be used to fund:

494 1. Any minimum benefits that were not included in the base
495 benefits; and

496 2. Any extra benefits that were added after March 12, 1999,
497 except as provided in subsection (4) pay extra benefits to the
498 police officers included in that pension plan; or

499 (b) May place the income from the premium tax in s. 185.08
500 in a separate supplemental plan to pay extra benefits to the
501 police officers, or police officers and firefighters if
502 included, participating in such separate supplemental plan.

503 (3) Insurance premium tax revenues may not be used to fund
504 benefits provided in a defined benefit plan which were not
505 provided by the plan as of March 1, 2013.

506 (4) If a plan offers extra benefits, such benefits may be
507 reduced if the plan continues to meet the base benefits of the
508 plan and the minimum standards set forth in this chapter. The
509 amount of insurance premium tax revenues previously used to fund
510 extra benefits before the reduction must be used as provided in
511 subsection (2)(b). Twenty-five percent of the amount of any
512 mandatory contribution paid by the municipality or special fire
513 control district that were previously used to fund extra
514 benefits before the reduction must be used as additional
515 contributions as specified in s. 185.07 to fund the plan's
516 actuarial deficiency.

517 (5)(2) The premium tax provided by this chapter shall in
518 all cases be used in its entirety to provide extra benefits to
519 police officers, or to police officers and firefighters if both
520 are included. However, local law plans in effect on October 1,



427674

585-01499C-13

521 ~~1998, must comply with the minimum benefit provisions of this~~
522 ~~chapter only to the extent that additional premium tax revenues~~
523 ~~become available to incrementally fund the cost of such~~
524 ~~compliance as provided in s. 185.16(2). If a plan is in~~
525 ~~compliance with such minimum benefit provisions, as subsequent~~
526 ~~additional tax revenues become available, they shall be used to~~
527 ~~provide extra benefits. Local law plans created by special act~~
528 ~~before May 27, 1939, shall be deemed to comply with this~~
529 ~~chapter. For the purpose of this chapter, the term:~~

530 (a) "Additional premium tax revenues" means revenues
531 received by a municipality pursuant to s. 185.10 which exceed
532 the amount received for calendar year 1997.

533 (b) "Extra benefits" means benefits in addition to or
534 greater than those provided to general employees of the
535 municipality and in addition to those in existence for police
536 officers on March 12, 1999.

537 (6)(3) A retirement plan or amendment to a retirement plan
538 may not be proposed for adoption unless the proposed plan or
539 amendment contains an actuarial estimate of the costs involved.
540 Such proposed plan or proposed plan change may not be adopted
541 without the approval of the municipality or, where permitted,
542 the Legislature. Copies of the proposed plan or proposed plan
543 change and the actuarial impact statement of the proposed plan
544 or proposed plan change shall be furnished to the division
545 before the last public hearing thereon. Such statement must also
546 indicate whether the proposed plan or proposed plan change is in
547 compliance with s. 14, Art. X of the State Constitution and
548 those provisions of part VII of chapter 112 which are not
549 expressly provided in this chapter. Notwithstanding any other



427674

585-01499C-13

550 provision, only those local law plans created by special act of
551 legislation before May 27, 1939, are deemed to meet the minimum
552 benefits and minimum standards only in this chapter.

553 ~~(7)(4)~~ Notwithstanding any other provision, with respect to
554 any supplemental plan municipality:

555 (a) Section 185.02(4)(a) does not apply, and a local law
556 plan and a supplemental plan may continue to use their
557 definition of compensation or salary in existence on March 12,
558 1999.

559 (b) A local law plan and a supplemental plan must continue
560 to be administered by a board or boards of trustees numbered,
561 constituted, and selected as the board or boards were numbered,
562 constituted, and selected on December 1, 2000.

563 ~~(c) The election set forth in paragraph (1)(b) is deemed to~~
564 ~~have been made.~~

565 ~~(8)(5)~~ The retirement plan setting forth the benefits and
566 the trust agreement, if any, covering the duties and
567 responsibilities of the trustees and the regulations of the
568 investment of funds must be in writing and copies made available
569 to the participants and to the general public.

570 (9) In addition to the defined benefit component of the
571 local law plan, each plan sponsor must have a defined
572 contribution plan component within the local law plan by October
573 1, 2013, or upon the creation date of a new participating plan.
574 However, the plan sponsor of any plan established by special act
575 of the Legislature has until July 1, 2014, to create a defined
576 contribution component within the plan.

577 Section 9. The Legislature finds that a proper and
578 legitimate state purpose is served when employees and retirees



427674

585-01499C-13

579 of the state and its political subdivisions, and the dependents,
580 survivors, and beneficiaries of such employees and retirees, are
581 extended the basic protections afforded by governmental
582 retirement systems that provide fair and adequate benefits and
583 that are managed, administered, and funded in an actuarially
584 sound manner as required by s. 14, Article X of the State
585 Constitution and part VII of chapter 112, Florida Statutes.
586 Therefore, the Legislature determines and declares that this act
587 fulfills an important state interest.

588 Section 10. This act shall take effect July 1, 2013.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 458

INTRODUCER: Senator Ring

SUBJECT: Firefighter and Police Pension Plans

DATE: February 4, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Pre-meeting
2.			CA	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 458 substantially amends provisions specifying how insurance premium tax revenues must be used in police and firefighter pension plans. The bill requires that plan sponsors use insurance premium tax dollars to meet the minimum benefits provisions in Chapters 175 and 185, as of March 1, 2013, and then fund the annual costs of the plans. After these two uses, if the plan is less than fully funded, then half of the remaining premium tax revenues must be used to pre-fund the plan's actuarial deficiency. Any insurance premium tax revenues remaining after these three uses must be used to fund defined contribution supplemental benefits.

The bill also clarifies that a maximum of 300 hours of overtime may be included for purposes of calculating municipal police pension plan benefits.

This bill substantially amends sections 175.032, 175.091, 175.351, 185.02, 185.07, and 185.35 of the Florida Statutes.

II. Present Situation:

The "Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund" Acts

The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts¹ declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police

¹ See chapters 175 and 185, F.S.

officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.²

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive to cities—access to premium tax revenues—to encourage the establishment of firefighter retirement plans. Fourteen years later, the Legislature enacted chapter 185, F.S., which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”); employee contributions; other revenue sources; and mandatory payments by the city of the normal cost of the plan.³ To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division of Retirement (“division”) in the Department of Management Services (DMS), but day-to-day operational control rests with local boards of trustees. Most firefighters and police officers participate in these plans. If the division deems that a firefighter or police pension plan created pursuant to chapters 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

The Firefighters' Pension Trust Fund of each municipality or special fire control district is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district.⁴ It is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.⁵ In 2011, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$71.7 million.⁶

The Police Officers' Retirement Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.⁷ Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the DOR, and the net proceeds are transferred to the appropriate fund at the division.⁸ In 2011, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$59.6 million.⁹

² See ss. 175.021(1) and 185.01(1), F.S.

³ Section 175.091(1)(a), F.S.

⁴ Section 175.101(1), F.S.

⁵ See s. 175.121, F.S.

⁶ Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Firefighters*, available online at: https://www.rol.frs.state.fl.us/forms/Fire_2011.pdf (last visited on December 19, 2012).

⁷ See s. 185.08, F.S.

⁸ See s. 185.10, F.S.

⁹ Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2011.pdf (last visited on December 19, 2012).

Chapters 175 and 185, F.S., specify certain “minimum benefits” that must be provided in firefighter and police plans,¹⁰ summarized in relevant part below:

Benefit	Description of minimum level
Retirement Benefit	2% x average final compensation x years of creditable service
Average Final Compensation (AFC)	Average annual compensation of highest 5 years of last 10 years of service
Vesting	10 years
Normal Retirement Age	Age 55 with 10 years of creditable service or Age 52 with 25 years of service
Early Retirement	Age 50 with 10 years of service Retirement benefit is reduced 3 percent for each year prior to reaching normal retirement age.
Earnings	Police = total cash remuneration Fire = fixed monthly compensation
Death Benefits	Prior to vesting - beneficiary receives employee contributions without interest earnings Vested - beneficiary receives benefit based on early or normal retirement benefits, whichever are applicable Post-retirement - beneficiary receives benefit based on retirement benefit option selected by member at time of retirement
Disability Benefits	Eligibility - no service requirement for in line of duty disability; 10 years of service for non service related disability Benefits - no less than 25 percent of average monthly earnings if non-service related; no less than 42 percent of average monthly earnings if service related

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans, except the local law plans established by the cities of Jacksonville, Coral Gables, and Miami.¹¹ All pension plans falling under these chapters were required to meet the specific “minimum benefit” standards. The law required that insurance premium tax revenues, over the amount received for calendar year 1997, be used to provide additional or “extra benefits” in firefighter and police officer pension plans. The term “extra benefits” means benefits in addition to or

¹⁰ Sections 175.162 and 185.16, F.S.

¹¹ Sections 175.351(3) and 185.35(3), F.S.

greater than those provided to general employees of the municipality, and in addition to those in existence for firefighters and police officers on March 12, 1999.¹²

Until August 2012, the division had consistently interpreted the law to require that premium tax revenues be used first to meet any minimum benefit requirements and those other pension benefits that were in place on March 12, 1999. Once the plan was in compliance with the minimum benefits requirements, any additional premium tax revenues had to be used in their entirety to provide extra benefits. Plans were not permitted to reduce pension benefits below the minimum benefits level or the level of pension benefits in effect on March 12, 1999, if greater.

Recent Interpretation

In response to a letter from the City of Naples in August 2012, the division advised that its ongoing interpretation of s. 185.35(2), F.S., “appears inaccurate.” The division was asked, in essence, whether a city that negotiated and mutually agreed with its police officers to reduce benefits below levels in place on March 12, 1999, would jeopardize its premium tax revenues. In its new interpretation, the division advised that for local law plans in effect on October 1, 1998, the law compels the plan to provide chapter minimum benefits only to the extent that those benefits can be funded with “additional premium tax revenues.” So, for local law plans in effect on October 1, 1998, chapter minimum benefits must be provided only to the extent that they can be funded with premium tax revenues received in excess of the amount received for calendar year 1997.

Under the new interpretation, *it appears* that the following things are true:

- A plan sponsor may redirect, at its discretion, its pre-1997 premium tax revenues from funding minimum pension benefits to funding other non-pension retirement benefits;
- The plan’s pension benefits could be reduced to the level that can be funded solely by those additional premium tax revenues received in excess of the 1997 level;
- A plan sponsor could reduce its mandatory contribution it was previously making to the plan to fund minimum benefits and redirect those monies to other municipal purposes; and
- Post-1997 insurance premium tax revenues used previously to fund “extra benefits” would be used to fund the minimum benefits.

The division has subsequently provided this new interpretation to other inquiring cities, on a case by case basis. DMS has not adopted this new interpretation as a rule, nor its previous entirely different interpretation of the exact same statutory language.

Definition of Salary in Municipal Police Pension Plans

A 300 hour cap on the amount of overtime hours to be included in the calculation of retirement benefits was added to ss. 112.66, 175.032, and 185.02, F.S., by SB 1128 in 2011. The provisions for general public retirement systems (Chapter 112, F.S.) and firefighter pensions (Chapter 175, F.S.) did not have existing stipulations allowing any overtime hours to be included in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before amendment by SB 1128:

¹² See ss. 175.351 and 185.35, F.S.

“Compensation” or “salary” means the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

After amendment, the section reads as follows:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

The pre-SB 1128 provision set the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The post-SB 1128 language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. After the effective date of SB 1128, the DMS Division of Retirement appeared to take the position that SB 1128 did not *replace* the floor with a cap, but supplemented the 300 floor with a 300 hour cap. In other words, the employer would have had to include at least 300 hours of overtime in the calculation, but could not include more than 300 hours. Subsequently, however, the division has taken the position that the amount of overtime hours that may be included when calculating retirement benefits may be anywhere from 0 to 300 hours.¹³

III. Effect of Proposed Changes:

Use of Insurance Premium Tax Revenues

The bill substantially changes how insurance premium tax revenues must be used in the funding of police and firefighter pension plans in Chapter 175 and 185, Florida Statutes.

¹³ Letter from the DMS Division of Retirement to City of Largo, dated April 4, 2012, on file with the Committee on Governmental Oversight and Accountability.

The bill amends parallel provisions in Chapters 175 and 185, F.S., and specifies that in order to receive insurance premium tax revenues, the premium tax revenues must be used as follows:

- First, to meet the annual costs of providing “minimum benefits,” which are defined in the bill as the lesser of the benefits provided in the defined benefit plan as of March 1, 2013, or the benefits specified in s. 175.162, F.S.;
- Next, to meet annual costs associated with additional pension benefits;
- If the plan is less than 100% funded, 50% of the annual insurance premium tax revenues remaining after the two uses above must be used to pre-fund the actuarial liability of the plan; and
- Any premium tax revenues remaining after the three uses above must be used to provide “supplemental benefits,” which are defined in the bill as defined contribution benefits.

The bill also requires that the plan sponsor may not reduce its mandatory contributions below the level required in the plan year ending before March 1, 2013, unless or until the pension plan has no actuarial deficiency.

The bill also deletes language that found local law plans created by special act before May 27, 1939, are deemed to be in compliance with the chapter. These local law plans (Jacksonville, Coral Gables, and Miami) will be required to comply with the chapter minimum benefits and minimum standards.

300 Hour Cap

The bill amends s. 185.02(4), F.S., to delete the sentence that states: “A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year.”

Deleting this sentence should clarify that the definition has a maximum cap of 300 hours, with no required minimum, consistent with a recent interpretation by the division, as it applies to the inclusion of overtime hours in the calculation of police retirement benefits.

Important State Interest

Section 7 provides that the Legislature determines that the bill fulfills an important state interest as related to public pension plans.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 7 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

The bill requires all plan sponsors of pension plans created pursuant to chapters 175 and 185, F.S., to continue to contribute, at a minimum, the same level of funding that the plan sponsors contributed during the 2012 plan year. Since the provisions of the bill apply to cities and special fire control districts alike, the expenditures required by the bill, if any, are required by all persons similarly situated.

In addition, it is unclear that this bill requires cities and counties to expend any additional funds than they are obligated to spend under current law. The plan sponsors (cities and special fire control districts) are responsible for the cost of the overall pension plan. If employee contributions, insurance premium tax revenues, and other miscellaneous revenues of the plan sponsor are not sufficient to fund the pension plan, the plan sponsor must contribute the difference. While the timing of such contributions may have been modified, the overall expenditure has not increased; in fact, it may be reduced since additional investment earnings may accrue and be used to offset the plan sponsors' contributions in the future. Under this analysis, the bill may be exempt from the requirements of section (18) of Article VII of the State Constitution if the bill has an insignificant fiscal impact on cities and counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill should reduce local police and firefighter plans' long term unfunded liabilities. The overall costs or savings associated with the bill are indeterminate, since each of the approximately 500 plans affected by the bill has a different funded status.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Ring

29-00459A-13

2013458

A bill to be entitled

An act relating to firefighter and police officer pension plans; amending s. 175.032, F.S.; revising definitions to conform to changes made by the act; amending s. 175.091, F.S.; providing for an additional mandatory payment by the municipality or special fire control district to the firefighters' pension trust fund; amending s. 175.351, F.S., relating to municipalities and special fire control districts that have their own pension plans and want to participate in the distribution of a tax fund; revising definitions; specifying a payment that must be made by the municipality or district to the defined benefit plan; revising how income from the premium tax and other revenues must be used; amending s. 185.02, F.S.; revising definitions to conform to changes made by the act; deleting a provision allowing a local law plan to limit the amount of overtime payments which can be used for retirement benefit calculations; amending s. 185.07, F.S.; providing for an additional mandatory payment by the municipality to the municipal police officers' retirement trust fund; amending s. 185.35, F.S., relating to municipalities that have their own pension plans for police officers and want to participate in the distribution of a tax fund; revising definitions; specifying a payment that must be made by the municipality into the defined benefit plan; revising how income from the premium tax and other revenues must be used; providing a declaration

Page 1 of 16

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29-00459A-13

2013458

of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (11) and (17) of section 175.032, Florida Statutes, are amended to read:

175.032 Definitions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(11) "Local law plan" means a defined benefit pension plan for firefighters, or for firefighters or police officers if both are ~~where~~ included, as described in s. 175.351, established by municipal ordinance, special district resolution, or special act of the Legislature, which ~~enactment~~ sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter if the, provided that required minimum benefits as defined in s. 175.351(1) and minimum standards of this chapter are met. However, any such variance must ~~shall~~ provide a greater benefit for firefighters. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 175.261(2).

(17) "Supplemental plan" means a plan to which deposits are made to provide extra benefits for firefighters, or for firefighters and police officers if both are ~~where~~ included, under this chapter. Such a plan is an element of a local law plan and exists in conjunction with a defined benefit plan that

Page 2 of 16

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29-00459A-13

2013458

meets the minimum benefits as defined in s. 175.351(1) and minimum standards of this chapter.

Section 2. Paragraphs (e), (f), and (g) of subsection (1) of section 175.091, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection, to read:

175.091 Creation and maintenance of fund.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The firefighters' pension trust fund in each municipality and in each special fire control district shall be created and maintained in the following manner:

(e) By mandatory payment by the municipality or special fire control district of the difference between the mandatory payment required under paragraph (d) for the most recent plan year ending before March 1, 2013, and the current plan year. This paragraph may not be construed to reduce the aggregate mandatory payment below the sum required under paragraph (d).

Nothing in this section shall be construed to require adjustment of member contribution rates in effect on the date this act becomes a law, including rates that exceed 5 percent of salary, provided that such rates are at least one-half of 1 percent of salary.

Section 3. Section 175.351, Florida Statutes, is amended to read:

175.351 Municipalities and special fire control districts that have ~~having~~ their own pension plans for firefighters. ~~For~~

29-00459A-13

2013458

~~any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter,~~ In order for a municipality or municipalities and special fire control district that has its districts with their own pension plan ~~plans~~ for firefighters, or for firefighters and police officers if both are included, to participate in the distribution of the tax fund established under pursuant to s. 175.101, the municipality or special fire control district local law plans must meet the minimum benefits as defined in subsection (1) and the minimum standards set forth in this chapter, and comply with subsections (2), (3), and (4).

(1) As used in this section, the term:

(a) "Additional pension benefits" means those benefits offered by the plan as of March 1, 2013, which exceed minimum benefits, but excluding benefits offered in a supplemental plan.

(b) "Annual costs" means the total of the normal costs of the plan and the costs associated with amortizing any unfunded actuarial liability of the plan.

(c) "Minimum benefits" means the lesser of the benefits provided in the defined benefit plan as of March 1, 2013, or the benefits described in s. 175.162 as of March 1, 2013.

(d) "Supplemental benefits" means those benefits provided in a defined contribution plan.

~~(1) If a municipality has a pension plan for firefighters, or a pension plan for firefighters and police officers if included, which in the opinion of the division meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of firefighters of the municipality, may:~~

29-00459A-13

2013458

~~(a) Place the income from the premium tax in s. 175.101 in such pension plan for the sole and exclusive use of its firefighters, or for firefighters and police officers if included, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the firefighters included in that pension plan; or~~

~~(b) Place the income from the premium tax in s. 175.101 in a separate supplemental plan to pay extra benefits to firefighters, or to firefighters and police officers if included, participating in such separate supplemental plan.~~

(2) The municipality or special fire control district shall, at a minimum, contribute into the defined benefit plan the mandatory payment required under s. 175.091(1)(d) which the municipality or special fire control district contributed for the most recent plan year ending before March 1, 2013. The amount of the mandatory payment may be reduced to the sum required under s. 175.091(1)(d) if the plan has no actuarial deficiency as shown in the latest actuarial valuation of the plan.

~~(3)(2) The premium tax provided by this chapter shall in all cases be used in its entirety to provide retirement extra benefits to firefighters, or to firefighters and police officers if both are included, after using all other revenues, including mandatory payments by the municipality or special fire control district, employee contributions, and investment earnings received by the plan, in the following order:~~

(a) The annual insurance premium revenues shall be used first to meet the annual costs associated with providing the minimum benefits set forth in this section.

29-00459A-13

2013458

(b) The annual insurance premium revenues shall be used next to meet the annual costs associated with any additional pension benefits.

(c) If the plan has an actuarial deficiency as shown in the latest actuarial valuation of the plan, 50 percent of the annual insurance premium revenues remaining after the uses specified in paragraphs (a) and (b) shall be allocated as additional contributions to fund such deficiency.

(d) Any annual insurance premium revenues remaining after the uses specified in paragraphs (a), (b), and (c) shall be used to provide supplemental benefits. However, local law plans in effect on October 1, 1998, must comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 175.162(2)(a). If a plan is in compliance with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they must be used to provide extra benefits. Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter. For the purpose of this chapter, the term:

~~(a) "Additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed that amount received for calendar year 1997.~~

~~(b) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters on March 12, 1999.~~

(4) Insurance premium tax revenues may not be used to fund

29-00459A-13

2013458

175 benefits provided in a defined benefit plan which were not
 176 provided by the plan as of March 1, 2013.

177 (5)-(3) A retirement plan or amendment to a retirement plan
 178 may not be proposed for adoption unless the proposed plan or
 179 amendment contains an actuarial estimate of the costs involved.
 180 Such proposed plan or proposed plan change may not be adopted
 181 without the approval of the municipality, special fire control
 182 district, or, where permitted, the Legislature. Copies of the
 183 proposed plan or proposed plan change and the actuarial impact
 184 statement of the proposed plan or proposed plan change shall be
 185 furnished to the division before the last public hearing
 186 thereon. Such statement must also indicate whether the proposed
 187 plan or proposed plan change is in compliance with s. 14, Art. X
 188 of the State Constitution and those provisions of part VII of
 189 chapter 112 which are not expressly provided in this chapter.
 190 Notwithstanding any other provision, only those local law plans
 191 created by special act of legislation before May 27, 1939, are
 192 deemed to meet the minimum benefits and minimum standards only
 193 in this chapter.

194 (6)-(4) Notwithstanding any other provision, with respect to
 195 any supplemental plan municipality:

196 (a) A local law plan and a supplemental plan may continue
 197 to use their definition of compensation or salary in existence
 198 on March 12, 1999.

199 (b) Section 175.061(1)(b) does not apply, and a local law
 200 plan and a supplemental plan shall continue to be administered
 201 by a board or boards of trustees numbered, constituted, and
 202 selected as the board or boards were numbered, constituted, and
 203 selected on December 1, 2000.

29-00459A-13

2013458

204 ~~(e) The election set forth in paragraph (1)(b) is deemed to~~
 205 ~~have been made.~~

206 (7)-(5) The retirement plan setting forth the benefits and
 207 the trust agreement, if any, covering the duties and
 208 responsibilities of the trustees and the rules governing
 209 ~~regulations of~~ the investment of funds must be in writing, and
 210 copies made available to the participants and to the general
 211 public.

212 Section 4. Subsections (4), (10), and (15) of section
 213 185.02, Florida Statutes, are amended to read:

214 185.02 Definitions.—For any municipality, chapter plan,
 215 local law municipality, or local law plan under this chapter,
 216 the following words and phrases as used in this chapter shall
 217 have the following meanings, unless a different meaning is
 218 plainly required by the context:

219 (4) "Compensation" or "salary" means, for noncollectively
 220 bargained service earned before July 1, 2011, or for service
 221 earned under collective bargaining agreements in place before
 222 July 1, 2011, the total cash remuneration including "overtime"
 223 paid by the primary employer to a police officer for services
 224 rendered, but not including any payments for extra duty or
 225 special detail work performed on behalf of a second party
 226 employer. ~~A local law plan may limit the amount of overtime~~
 227 ~~payments which can be used for retirement benefit calculation~~
 228 ~~purposes; however, such overtime limit may not be less than 300~~
 229 ~~hours per officer per calendar year.~~ For noncollectively
 230 bargained service earned on or after July 1, 2011, or for
 231 service earned under collective bargaining agreements entered
 232 into on or after July 1, 2011, the term has the same meaning

29-00459A-13

2013458

except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

(a) Any retirement trust fund or plan that meets the requirements of this chapter does not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he or she were not participating in such program and ~~shall be~~ treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for that plan year may not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation, as amended by the Omnibus Budget Reconciliation Act of 1993, which limitation of \$150,000 shall be adjusted as required by federal law for qualified government plans and ~~shall be~~ further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member before the first plan year beginning on or after January 1, 1996, the limitation on compensation may not be less than the

29-00459A-13

2013458

maximum compensation amount that was allowed to be taken into account under the plan ~~as~~ in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

(10) "Local law plan" means a defined benefit pension plan for police officers, or for police officers and firefighters if both are, where included, as described in s. 185.35, established by municipal ordinance or special act of the Legislature, which ~~enactment~~ sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter if the ~~provided that required~~ minimum benefits as defined in s. 185.35(1) and minimum standards of this chapter are met. However, any such variance must ~~shall~~ provide a greater benefit for police officers. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 185.221(2)(b).

(15) "Supplemental plan" means a plan to which deposits of the premium tax moneys as provided in s. 185.08 are made to provide extra benefits to police officers, or police officers and firefighters if both are where included, under this chapter. Such ~~a~~ plan is an element of a local law plan and exists in conjunction with a defined benefit plan that meets the minimum benefits as defined in s. 185.35(1) and minimum standards of this chapter.

Section 5. Paragraphs (e), (f), and (g) of subsection (1) of section 185.07, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection, to read:

29-00459A-13

2013458

291 185.07 Creation and maintenance of fund.—For any
 292 municipality, chapter plan, local law municipality, or local law
 293 plan under this chapter:

294 (1) The municipal police officers' retirement trust fund in
 295 each municipality described in s. 185.03 shall be created and
 296 maintained in the following manner:

297 (e) By mandatory payment by the municipality of the
 298 difference between the mandatory payment required by paragraph
 299 (d) for the most recent plan year ending before March 1, 2013,
 300 and the current plan year. This paragraph may not be construed
 301 to reduce the aggregate mandatory payment by the municipality
 302 below the sum required by paragraph (d).

303
 304 Nothing in this section shall be construed to require adjustment
 305 of member contribution rates in effect on the date this act
 306 becomes a law, including rates that exceed 5 percent of salary,
 307 provided that such rates are at least one-half of 1 percent of
 308 salary.

309 Section 6. Section 185.35, Florida Statutes, is amended to
 310 read:

311 185.35 Municipalities ~~that have~~ having their own pension
 312 plans for police officers. ~~For any municipality, chapter plan,~~
 313 ~~local law municipality, or local law plan under this chapter,~~ In
 314 order for a municipality that has its ~~municipalities with their~~
 315 own pension ~~plan plans~~ for police officers, or for police
 316 officers and firefighters if both are included, to participate
 317 in the distribution of the tax fund established pursuant to s.
 318 185.08, the municipality local law plans must meet the minimum
 319 benefits as defined in subsection (1) and the minimum standards

29-00459A-13

2013458

320 set forth in this chapter, and comply with subsections (2), (3),
 321 and (4).+

322 (1) As used in this subsection, the term:

323 (a) "Additional pension benefits" means those benefits
 324 offered by the plan as of March 1, 2013, which exceed minimum
 325 benefits, but excluding benefits offered in a supplemental plan.

326 (b) "Annual costs" means the total of the normal costs of
 327 the plan and the costs associated with amortizing any unfunded
 328 actuarial liability of the plan.

329 (c) "Minimum benefits" means the lesser of the benefits
 330 provided in the defined benefit plan as of March 1, 2013, or the
 331 benefits described in s. 185.16 as of March 1, 2013.

332 (d) "Supplemental benefits" means those benefits provided
 333 in a defined contribution plan.

334 ~~(1) If a municipality has a pension plan for police~~
 335 ~~officers, or for police officers and firefighters if included,~~
 336 ~~which, in the opinion of the division, meets the minimum~~
 337 ~~benefits and minimum standards set forth in this chapter, the~~
 338 ~~board of trustees of the pension plan, as approved by a majority~~
 339 ~~of police officers of the municipality, may:~~

340 ~~(a) Place the income from the premium tax in s. 185.08 in~~
 341 ~~such pension plan for the sole and exclusive use of its police~~
 342 ~~officers, or its police officers and firefighters if included,~~
 343 ~~where it shall become an integral part of that pension plan and~~
 344 ~~shall be used to pay extra benefits to the police officers~~
 345 ~~included in that pension plan; or~~

346 ~~(b) May place the income from the premium tax in s. 185.08~~
 347 ~~in a separate supplemental plan to pay extra benefits to the~~
 348 ~~police officers, or police officers and firefighters if~~

29-00459A-13

2013458

349 ~~included, participating in such separate supplemental plan-~~

350 (2) The municipality shall, at a minimum, contribute to the
 351 defined benefit plan the mandatory payment required under s.
 352 185.07(1)(d) which the municipality contributed for the most
 353 recent plan year ending before March 1, 2013. The amount of the
 354 mandatory payment may be reduced to the sum required under s.
 355 185.07(1)(d) if the plan has no actuarial deficiency as shown in
 356 the latest actuarial valuation of the plan.

357 (3)(2) The premium tax provided by this chapter shall in
 358 all cases be used in its entirety to provide retirement extra
 359 benefits to police officers, or to police officers and
 360 firefighters if both are included, after using all other
 361 revenues, including mandatory payments by the municipality,
 362 employee contributions, and investment earnings received by the
 363 plan, in the following order:

364 (a) The annual insurance premium revenues shall be used
 365 first to meet the annual costs associated with providing the
 366 minimum benefits set forth in this section.

367 (b) The annual insurance premium revenues shall be used
 368 next to meet the annual costs associated with any additional
 369 pension benefits.

370 (c) If the plan has an actuarial deficiency as shown in the
 371 latest actuarial valuation of the plan, 50 percent of the annual
 372 insurance premium revenues remaining after the uses specified in
 373 paragraphs (a) and (b) shall be allocated as additional
 374 contributions to fund such deficiency.

375 (d) Any annual insurance premium revenues remaining after
 376 the uses specified in paragraphs (a), (b), and (c) shall be used
 377 to provide supplemental benefits. However, local law plans in

29-00459A-13

2013458

378 ~~effect on October 1, 1998, must comply with the minimum benefit~~
 379 ~~provisions of this chapter only to the extent that additional~~
 380 ~~premium tax revenues become available to incrementally fund the~~
 381 ~~cost of such compliance as provided in s. 185.16(2). If a plan~~
 382 ~~is in compliance with such minimum benefit provisions, as~~
 383 ~~subsequent additional tax revenues become available, they shall~~
 384 ~~be used to provide extra benefits. Local law plans created by~~
 385 ~~special act before May 27, 1939, shall be deemed to comply with~~
 386 ~~this chapter. For the purpose of this chapter, the term:~~

387 (a) "Additional premium tax revenues" means revenues
 388 received by a municipality pursuant to s. 185.10 which exceed
 389 the amount received for calendar year 1997.

390 (b) "Extra benefits" means benefits in addition to or
 391 greater than those provided to general employees of the
 392 municipality and in addition to those in existence for police
 393 officers on March 12, 1999.

394 (4) Insurance premium tax revenues may not be used to fund
 395 benefits provided in a defined benefit plan which were not
 396 provided by the plan as of March 1, 2013.

397 (5)(3) A retirement plan or amendment to a retirement plan
 398 may not be proposed for adoption unless the proposed plan or
 399 amendment contains an actuarial estimate of the costs involved.
 400 Such proposed plan or proposed plan change may not be adopted
 401 without the approval of the municipality or, where permitted,
 402 the Legislature. Copies of the proposed plan or proposed plan
 403 change and the actuarial impact statement of the proposed plan
 404 or proposed plan change shall be furnished to the division
 405 before the last public hearing thereon. Such statement must also
 406 indicate whether the proposed plan or proposed plan change is in

29-00459A-13 2013458
 407 compliance with s. 14, Art. X of the State Constitution and
 408 those provisions of part VII of chapter 112 which are not
 409 expressly provided in this chapter. Notwithstanding any other
 410 provision, only those local law plans created by special act of
 411 legislation before May 27, 1939, are deemed to meet the minimum
 412 benefits and minimum standards only in this chapter.

413 ~~(6)(4)~~ Notwithstanding any other provision, with respect to
 414 any supplemental plan municipality:

415 (a) Section 185.02(4) (a) does not apply, and a local law
 416 plan and a supplemental plan may continue to use their
 417 definition of compensation or salary in existence on March 12,
 418 1999.

419 (b) A local law plan and a supplemental plan must continue
 420 to be administered by a board or boards of trustees numbered,
 421 constituted, and selected as the board or boards were numbered,
 422 constituted, and selected on December 1, 2000.

423 ~~(c) The election set forth in paragraph (1)(b) is deemed to~~
 424 ~~have been made.~~

425 ~~(7)(5)~~ The retirement plan setting forth the benefits and
 426 the trust agreement, if any, covering the duties and
 427 responsibilities of the trustees and the rules governing
 428 ~~regulations of~~ the investment of funds must be in writing and
 429 copies made available to the participants and to the general
 430 public.

431 Section 7. The Legislature finds that a proper and
 432 legitimate state purpose is served when employees and retirees
 433 of the state and its political subdivisions, and the dependents,
 434 survivors, and beneficiaries of such employees and retirees, are
 435 extended the basic protections afforded by governmental

29-00459A-13 2013458
 436 retirement systems that provide fair and adequate benefits and
 437 that are managed, administered, and funded in an actuarially
 438 sound manner as required by s. 14, Article X of the State
 439 Constitution and part VII of chapter 112, Florida Statutes.
 440 Therefore, the Legislature determines and declares that this act
 441 fulfills an important state interest.

442 Section 8. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

2/6/13

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic RETIREMENTBill Number PCS 458 (if applicable)Name ROBERT SUAREZ

Amendment Barcode _____ (if applicable)

Job Title VICE PRESIDENT, FLORIDA FIREFIGHTERSAddress 345 W MADISON STREETPhone 305 984 3299

Street

TALLAHASSEEFL

City

State

Zip

E-mail RSUAREZ@IAFF587.orgSpeaking: ☒ For ☐ Against ☐ InformationRepresenting FLORIDA FIREFIGHTERSAppearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

2/6/13

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic RETIREMENTBill Number 458 BRADLEY (if applicable)Name ROBERT SUAREZAmendment Barcode 436070 (if applicable)Job Title VICE PRESIDENT, FLORIDA FIREFIGHTERSAddress 345 W MADISON STREETPhone 305 984 3299

Street

TALLAHASSEEFL

City

State

Zip

E-mail RSUAREZ@IAFF587.orgSpeaking: ☐ For ☒ Against ☐ InformationRepresenting FLORIDA FIREFIGHTERSAppearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

SENATE COMMITTEE APPEARANCE RECORD

(Submit to Committee Chairman or Administrative Assistant)

2-6-13

Date

SB 458

Bill Number

Name JAMES TULLEYPhone 321-383-5802Address 555 S. WASHINGTON AVE

Street

TITUSVILLE FL 32796

City

State

Zip

E-mail mayor@titusville.comSpeaking: ☐ For ☒ Against ☐ InformationSubject PENSION REFORMRepresenting CITY OF TITUSVILLELobbyist registered with Legislature: ☐ Yes ☒ No

Pursuant to s. 11.061, *Florida Statutes*, state employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chairman as a witness or for informational purposes.

If state employee: Time: from _____ .m. to _____ .m.

S-001 (01/2002)

THE FLORIDA SENATE**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/13

Meeting Date

Topic POLICE AND FIREFIGHTERS PENSIONBill Number SB 458

(if applicable)

Name HOWARD SCHIEFERDECKER

Amendment Barcode _____

(if applicable)

Job Title MAYOR OF MAITLANDAddress 1776 INDEPENDENCE LANE

Street

MAITLAND

City

FLORIDA

State

32751

Zip

Phone (407) 702-3131E-mail Haschie@aol.comSpeaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/13
Meeting DateTopic Pension ReformBill Number SB 458
(if applicable)Name Dwight W. SevensAmendment Barcode _____
(if applicable)Job Title City AttorneyAddress 555 S. Washington Ave.Phone 321-388-5693Titusville

E-mail _____

City State Zip

Speaking: ☐ For ☒ Against ☐ InformationRepresenting City of TitusvilleAppearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/13
Meeting DateTopic Police & Fire PensionsBill Number 458
(if applicable)Name Kraig ConnAmendment Barcode _____
(if applicable)

Job Title _____

Address 301 S. Bronough Suite 300Phone 222 9684Tallahassee

E-mail _____

City State Zip

Speaking: ☐ For ☒ Against ☐ InformationRepresenting Florida League of CitiesAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-13

Meeting Date

Topic Municipal Retirement Bill Number PCS for SB 458
(if applicable)
Name David Murral Amendment Barcode _____
(if applicable)
Job Title Director of Legislative Services
Address 300 E. Brevard Street Phone 850-222-3329
Tallahassee, FL 32301 E-mail davidm@flpb.org
City State Zip
Speaking: ☐ For ☐ Against ☒ Information
Representing Florida Police Benevolent Association
Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/13

Meeting Date

Topic Pensions Bill Number 458
(if applicable)
Name Lisa Henning Amendment Barcode _____
(if applicable)
Job Title Legislative Director, FOP
Address 242 Office Plaza Dr Phone 850-766-8808
Tallahassee, FL 32301 E-mail foplegislative@aol.com
City State Zip
Speaking: ☐ For ☐ Against ☒ Information
Representing Fraternal Order of Police
Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 6, 13

Meeting Date

Topic Local ProgressBill Number 458

(if applicable)

Name TIM CaddellAmendment Barcode _____
(if applicable)Job Title Gov. Relations AdministratorAddress 5851 Park Blvd Suite 203Phone 727-541-0721PINELLAS PARK FL 33781E-mail tcaddell@pinellas-park.com

City State Zip

Speaking: ☐ For ☒ Against ☐ InformationRepresenting CITY OF PINELLAS PARKAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/13

Meeting Date

Topic Police & Fire Persons 175/185Bill Number 458

(if applicable)

Name Keith BrinkmanAmendment Barcode _____
(if applicable)Job Title Bureau ChiefAddress 1317 Winewood BlvdPhone 850-414-6315TALL FL 32309E-mail keith.brinkman@dms.myflorida.com

City State Zip

Speaking: ☐ For ☐ Against ☒ InformationRepresenting DMSAppearing at request of Chair: ☒ Yes ☐ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-13
Meeting Date

Topic _____

Bill Number 458
(if applicable)

Name DAN DRAKE

Amendment Barcode _____
(if applicable)

Job Title Director - Division of Retirement

Address 1317 W. Inwood

Phone 850-487-4133

Tallahassee FL 32311
City State Zip

E-mail _____

Speaking: ☐ For ☐ Against ☒ Information

Representing DMS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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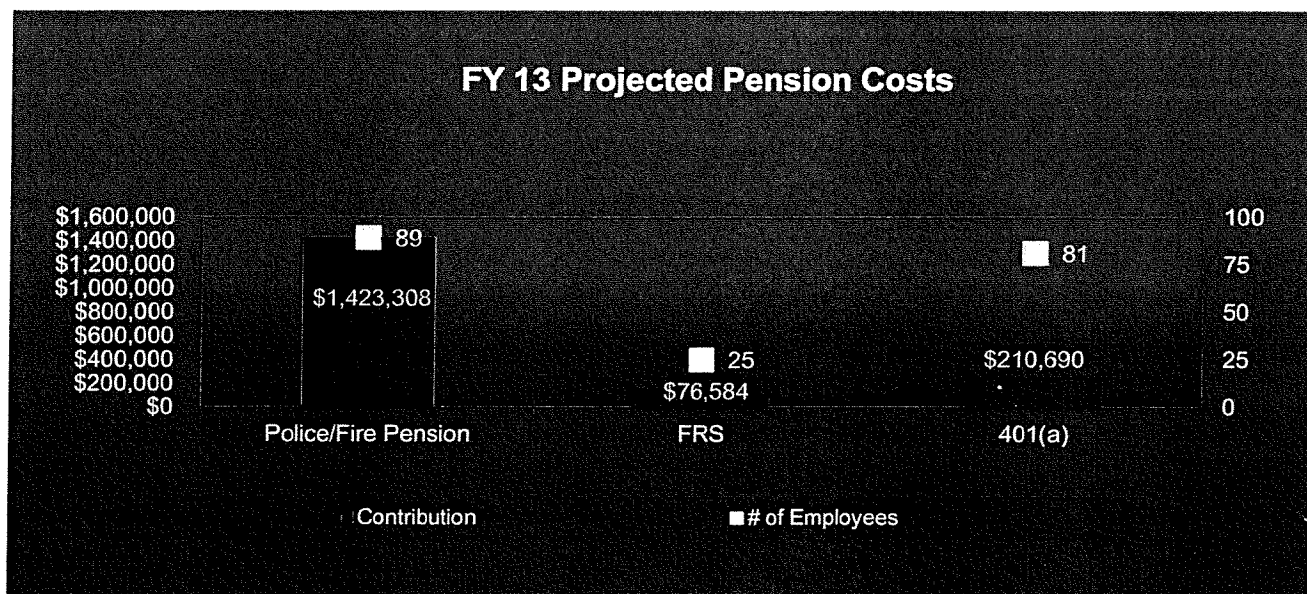
S-001 (10/20/11)

City of Maitland, Florida
February 4, 2013
Projected Pension Costs

City employees currently participate in one of three pension programs; the Florida Retirement System (FRS), the City of Maitland General Employee Defined Contribution Plan (401a), or the Police/Fire Pension Plan. The City is projected to contribute \$1.7M to the combined pension funds. Funding for the City's Police/Fire Pension Fund comes from three sources; the State of Florida (3.38% of salaries), plan participants (4.7% of their salary), and the City (approx 29.5% of salaries). The City's FY 2013 contribution is projected to be \$1.4M, approximately \$214K more than the FY 2012 contribution. The Police Officers' and Firefighters' Pension Board has been seeking out long term solutions to manage Fund costs and ultimately the City's contribution, while still maintaining a viable defined benefit retirement plan for public safety employees.

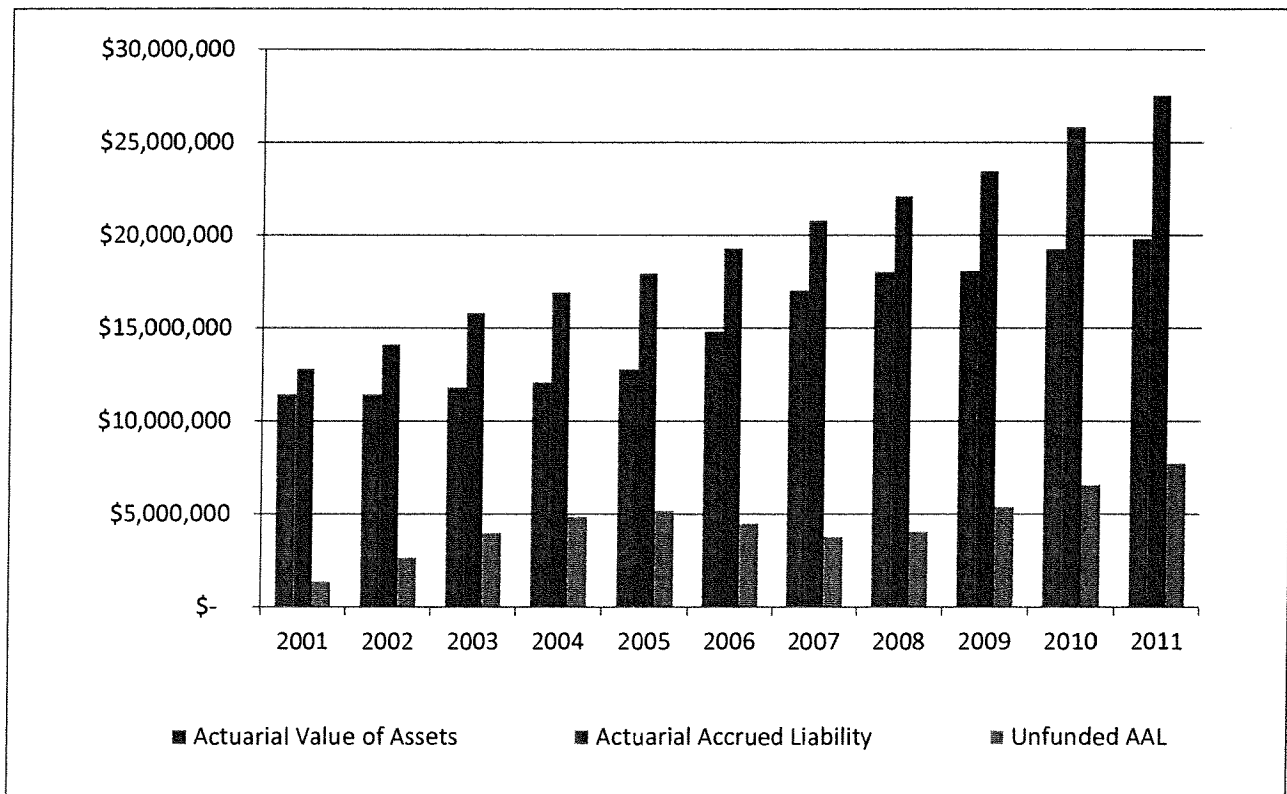
Employees that currently participate in the 401a plan receive a contribution of 6% of their annual salary from the City. The vesting schedule was also decreased from seven years to five years in an effort to make the plan more equitable. In FY 2008, Policy 2008-1(A) established a plan to drawdown forfeited employer contributions (the City's portion of contributions not eligible for collection by former employees). This drawdown allows the City to budget less than 6% of programmed salaries while still adequately funding the plan. This represents a saving of approximately \$38K to the current budget. The City is expected to spend \$211K (\$173K for General Fund Employees) on this plan in FY 2013. As a result of State efforts at pension reform, those employees who are still covered by FRS began contributing 3% to their retirement on July 1, 2011. The employee contribution requirement is currently part of litigation between the State and various affected groups, however the State adopted FY 2013 contribution rates showing an employee contribution. Contributions required to fund employees still covered by the FRS pension plan are 5.18% (October – June) and 6.71% (July – September, estimated), and are expected to cost \$77K (\$63K for General Fund employees).

Below is a graph that compares the required contributions for the employees covered by all three pensions.



City of Maitland, Florida
Municipal Police Officers' and Firefighters' Pension Trust Fund

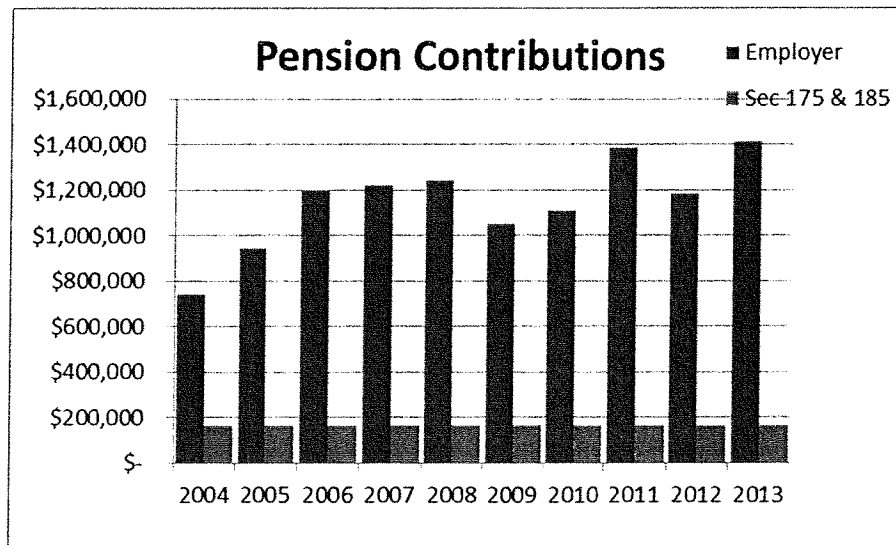
	Actuarial Value of Assets	Actuarial Accrued Liability	Unfunded AAL	Percent Funded
2001	\$ 11,442,647	\$ 12,818,064	\$ 1,375,417	89.3%
2002	\$ 11,437,820	\$ 14,120,124	\$ 2,682,304	81.0%
2003	\$ 11,825,677	\$ 15,832,181	\$ 4,006,504	74.7%
2004	\$ 12,095,153	\$ 16,954,107	\$ 4,858,954	71.3%
2005	\$ 12,783,312	\$ 17,971,675	\$ 5,188,363	71.1%
2006	\$ 14,822,949	\$ 19,314,077	\$ 4,491,128	76.7%
2007	\$ 17,034,572	\$ 20,819,953	\$ 3,785,381	81.8%
2008	\$ 18,046,761	\$ 22,112,703	\$ 4,065,942	81.6%
2009	\$ 18,091,778	\$ 23,488,675	\$ 5,396,897	77.0%
2010	\$ 19,275,829	\$ 25,867,151	\$ 6,591,322	74.5%
2011	\$ 19,811,681	\$ 27,547,237	\$ 7,735,556	71.9%



City of Maitland, Florida
Municipal Police Officers' and Firefighters' Pension Trust Fund

Pension Sustainability – The City of Maitland has a Municipal Police Officers' and Firefighters' Pension Defined Benefit Plan. As shown in the graph below, the City's (employer) pension contribution has grown from \$740K in 2004 to just over \$1.4 million in 2013 (representing 25.76% and 29.47% of payroll, respectively). Due to restrictions placed by the State on the premium tax revenues (Sec 175 & 185), that revenue source has gone from 5.48% of payroll to 3.38% during the same time frame. Restrictions on the premium tax revenue have resulted in approximately \$1,450K in excess premium tax revenues that the City was unable to utilize to reduce the unfunded pension liability since 1999.

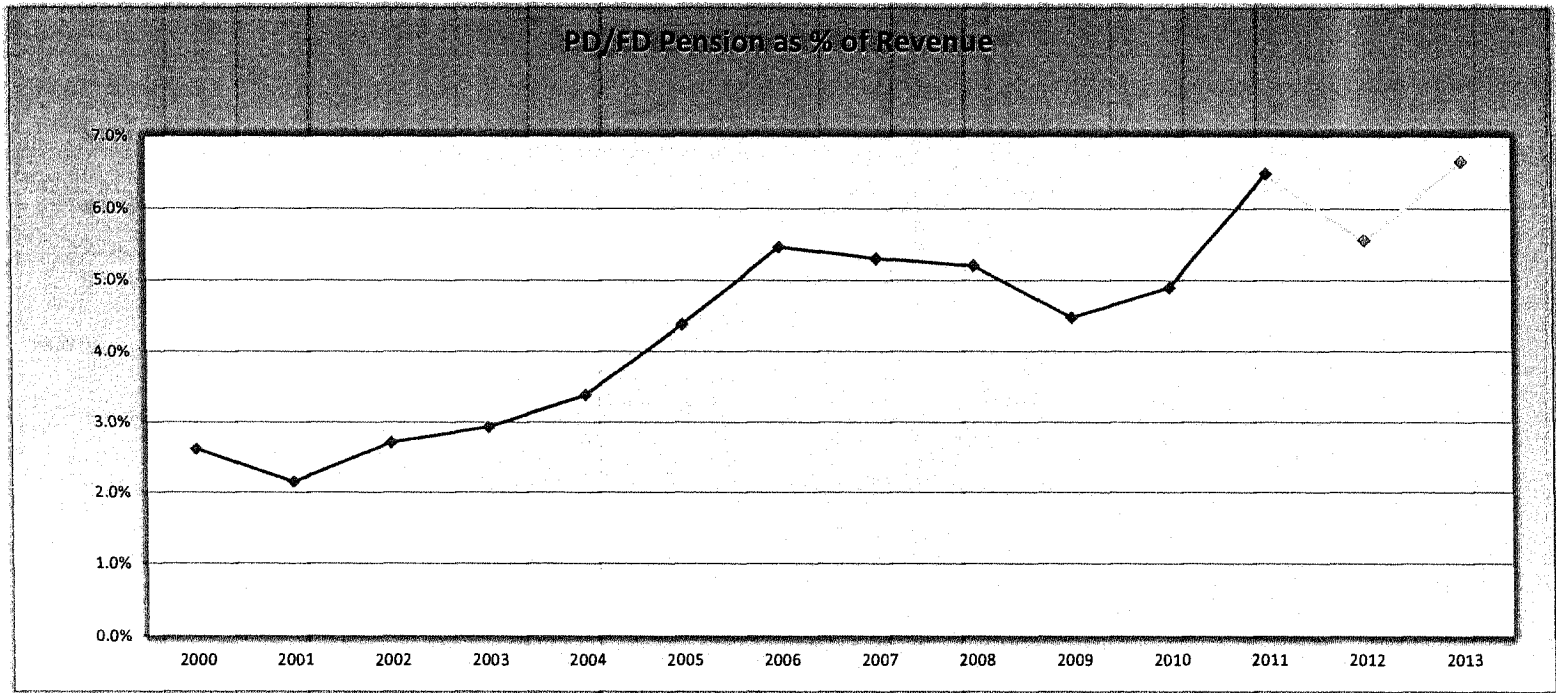
Year	Contributions	
	Employer	Sec 175 & 185
2004	740,427	165,317
2005	945,946	165,317
2006	1,197,740	165,317
2007	1,224,439	165,317
2008	1,241,818	165,317
2009	1,050,985	165,317
2010	1,108,866	165,317
2011	1,388,262	165,317
2012	1,186,961	165,317
2013	1,412,545	165,317



City of Maitland
Municipal Police Officers' and Firefighters' Pension Trust Fund

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total Gen Fund Revenues	\$ 14,278	\$ 16,343	\$ 17,857	\$ 17,808	\$ 21,853	\$ 21,599	\$ 21,945	\$ 23,094	\$ 23,859	\$ 23,502	\$ 22,643	\$ 21,415	\$ 21,346	\$ 21,043
Public Safety Expenditures	\$ 4,988	\$ 5,349	\$ 6,302	\$ 6,678	\$ 7,118	\$ 7,130	\$ 7,218	\$ 7,602	\$ 8,609	\$ 8,549	\$ 8,683	\$ 9,071	\$ 10,622	\$ 10,658
Police/Fire Pension Cont.	\$ 374	\$ 352	\$ 484	\$ 522	\$ 740	\$ 946	\$ 1,198	\$ 1,224	\$ 1,242	\$ 1,051	\$ 1,109	\$ 1,388	\$ 1,186	\$ 1,400
PS Exp/Total Revenues	34.9%	32.7%	35.3%	37.5%	32.6%	33.0%	32.9%	32.9%	36.1%	36.4%	38.3%	42.4%	49.8%	50.6%
PD/FD Cont/Total Revenue	2.6%	2.2%	2.7%	2.9%	3.4%	4.4%	5.5%	5.3%	5.2%	4.5%	4.9%	6.5%	5.6%	6.7%

Note: All dollars in thousands.



PRESENTED TO :

**SENATE GOVERNMENT OVERSIGHT
AND
ACCOUNTABILITY COMMITTEE**

REFERENCE SENATE BILL 458

FROM: THE CITY OF TITUSVILLE, FLORIDA

INDEX

	<u>PAGE</u>
FACT SHEET	i
PARTIAL HISTORY OF PREMIUM TAX RECEIPTS.....	1
ACTUARIAL GAINS AND LOSSES.....	2
CITY OF TITUSVILLE PROPERTY TAX VALUES.....	3
CITY OF TITUSVILLE OPERATING MILLAGE RATE.....	4
AD VALOREM REVENUES.....	5
CITY OF TITUSVILLE REVENUE.....	6
CITY PENSION CONTRIBUTION.....	7
CITY UNFUNDED ACCRUED PENSION LIABILITY.....	8
CITY OF TITUSVILLE TOTAL STAFFING LEVELS.....	9
5 YEAR HISTORY PENSION AS % OF BASE PAY.....	10
PENSION MULTIPLIER CHANGES.....	11

FACT SUMMARY

- **CITY OF TITUSVILLE POLICE AND FIRE PENSION CHAPTER 175/185 LOCAL LAW PLAN CREATED 1985**
- **COMPOSITION OF BOARD: 9 MEMBERS**
 1. (4) Representatives Police Department
 2. (4) Fire Department
 3. (1) Selected by majority voting members
 4. City Council Ministerial duty to appoint
- **MANAGEMENT OF PENSION PLAN AND FUNDS BY THE BOARD INCLUDING SELECTION AND EMPLOYMENT OF FUND MANAGER, ACTUARY AND ATTORNEY**
- **PENSION BOARD HAS HAD ACTUARIAL LOSSES THE LAST 11 YEARS**
- **TOTAL PENSION CONTRIBUTIONS AS PERCENTAGE OF AD VALOREM TAXES -79%**
- **2010 PENSION CONTRIBUTION \$949,000 IN 2012-13 - \$3.3M. POLICE AND FIRE CONTRIBUTION 50.33% OF PAYROLL**
- **CURRENT COLLECTIVE BARGAINING AGREEMENT OCTOBER 1, 2008-SEPTEMBER 30, 2011 IMPASSE PROCEEDINGS SPECIAL MASTER HEARING FEBRUARY 7, 2013.**
- **COMMENCED UNION NEGOTIATIONS IN 2010 INCLUDED PENSION REFORM**
- **CURRENT 2012-2013 BUDGET BALANCED WITH 10% SALARY ADJUSTMENT BY FURLOUGHS**

PARTIAL HISTORY OF PREMIUM TAX REFUNDS

<u>Received During Fiscal Year</u>	<u>Police</u>	<u>Fire</u>	<u>Total</u>	<u>Increase from Previous Year</u>
1990	120,047.70	78,538.92	198,586.62	_____ %
1991	127,139.10	77,465.83	204,604.93	3.0%
1992	121,968.60	74,630.04	196,598.64	-3.9%
1993	128,478.20	76,537.35	205,015.55	4.3%
1994	134,939.00	77,135.25	212,074.25	3.4%
1995	141,398.08	100,912.18	242,310.26	14.3%
1996	153,262.71	112,295.04	265,557.75	9.6%
1997	161,000.23	118,552.08	279,552.31	5.3%
1998	161,623.40	106,445.68	268,069.08	-4.1%
1999	163,472.64	128,648.11	292,120.75	9.0%
2000	155,698.99	128,596.62	284,295.61	-2.7%
2001	163,193.51	139,894.35	303,087.86	6.6%
2002	192,305.22	149,208.84	341,514.06	12.7%
2003	216,102.79	157,257.54	373,360.33	9.3%
2004	246,573.85	181,896.07	428,469.92	14.8%
2005	266,075.17	183,217.29	449,292.46	4.9%
2006	272,997.41	191,259.63	464,257.04	3.3%
2007	286,195.84	226,351.71	512,547.55	10.4%
2008	279,052.75	385,068.01	664,120.76	29.6%
2009	276,106.80	373,211.59	649,318.39	-2.2%
2010	256,406.46	321,758.81	578,165.27	-11.0%
2011	251,042.47	298,270.30	549,312.77	-5.0%

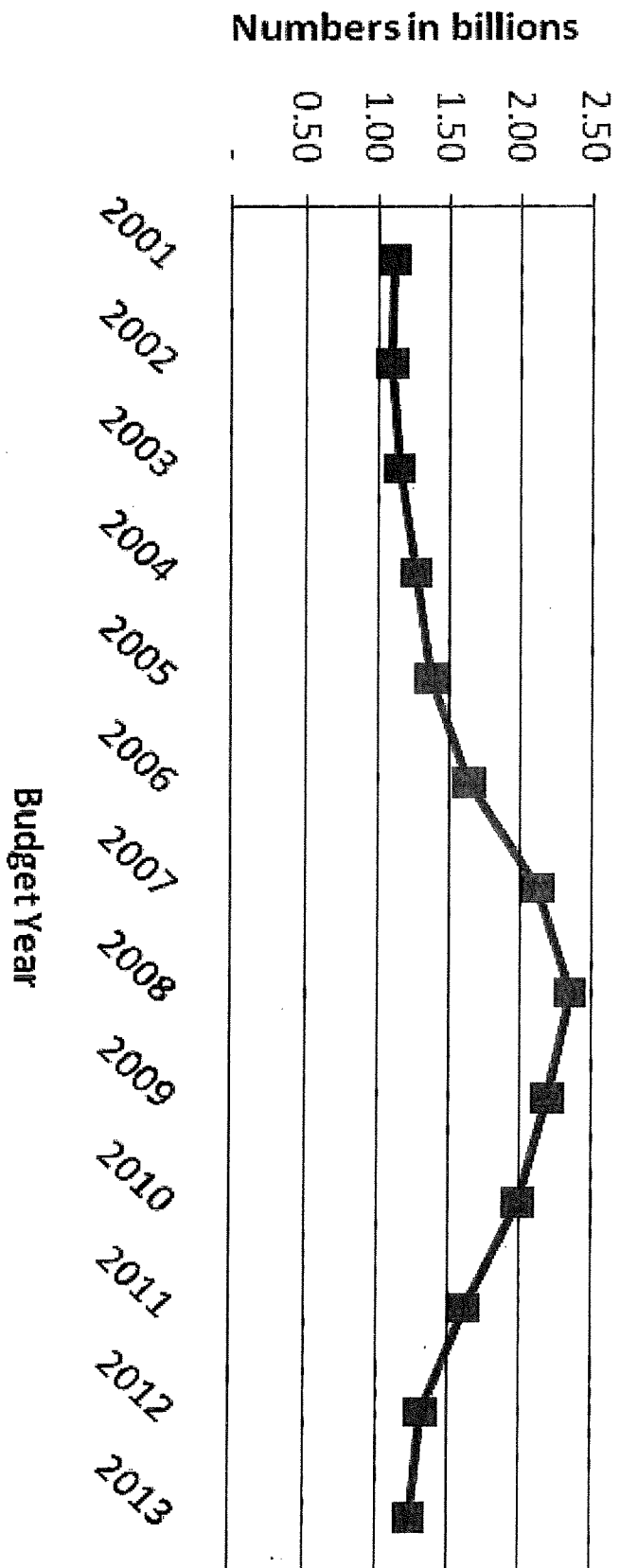
Special Actuarial Account

History of Benefit "Purchases" and Actuarial Gains and Losses

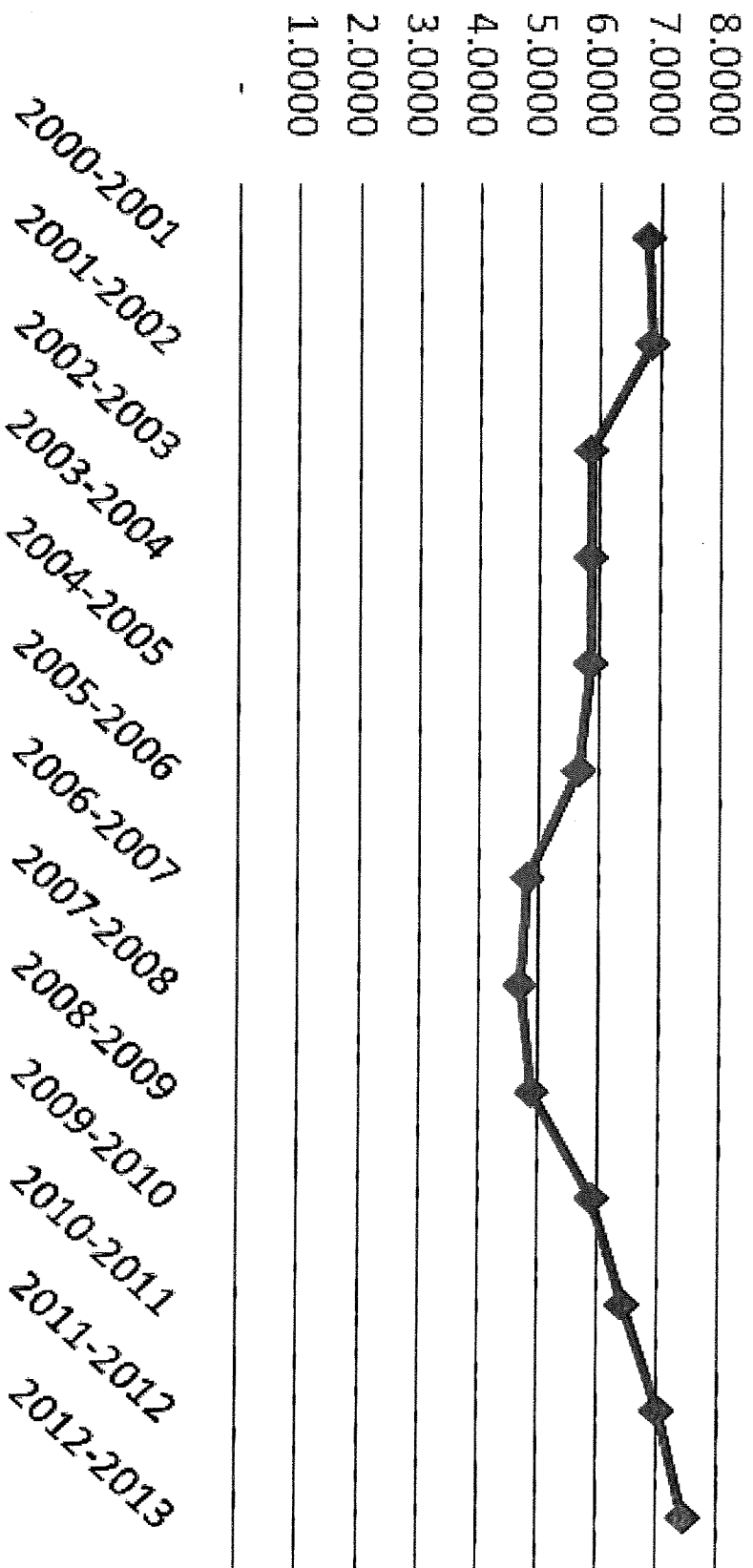
<u>Plan Year Ended</u>	<u>Benefit "Purchases"</u>		<u>Net Actuarial Gain (Loss)</u>
9/30/1991	106,565	(1)	407,179
9/30/1992	0		481,200
9/30/1993	0		(221,686)
9/30/1994	331,857	(2)	167,994
9/30/1995	251,762	(3)	(145,889)
9/30/1996	509,800	(4)	89,658
9/30/1997	0		678,279
9/30/1998	428,988	(5)	541,465
9/30/1999	716,239	(6)	967,544
9/30/2000	416,578	(7)	502,392
9/30/2001	0		(618,344)
9/30/2002	0		(2,039,277)
9/30/2003	0		(1,740,552)
9/30/2004	0		(1,869,013)
9/30/2005	0		(1,108,361)
9/30/2006	0		(2,471,326)
9/30/2007	0		(18,699)
9/30/2008	0		(1,581,383)
9/30/2009	0		(2,884,794)
9/30/2010	0		(2,634,658)
9/30/2011	0		(590,967)
Total	2,761,789		(14,089,238)

- (1) AIS dated 1/21/94
- (2) AIS dated 7/2/96
- (3) AIS dated 2/28/97
- (4) AIS dated 1/22/98
- (5) AIS dated 8/26/99
- (6) AIS dated 5/4/00
- (7) AIS dated 2/23/01

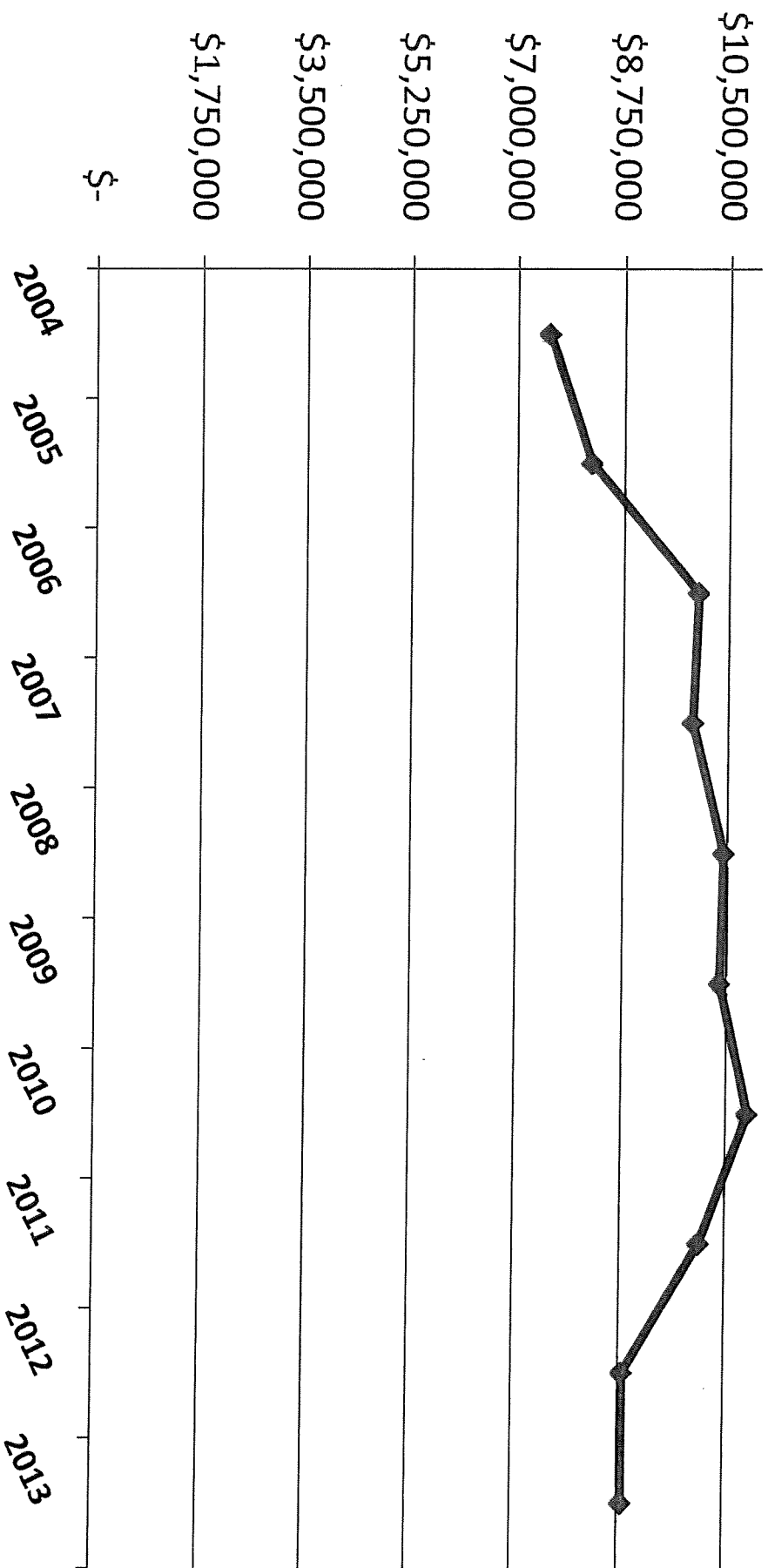
City of Titusville Property Tax Values



City of Titusville Operating Millage Rate

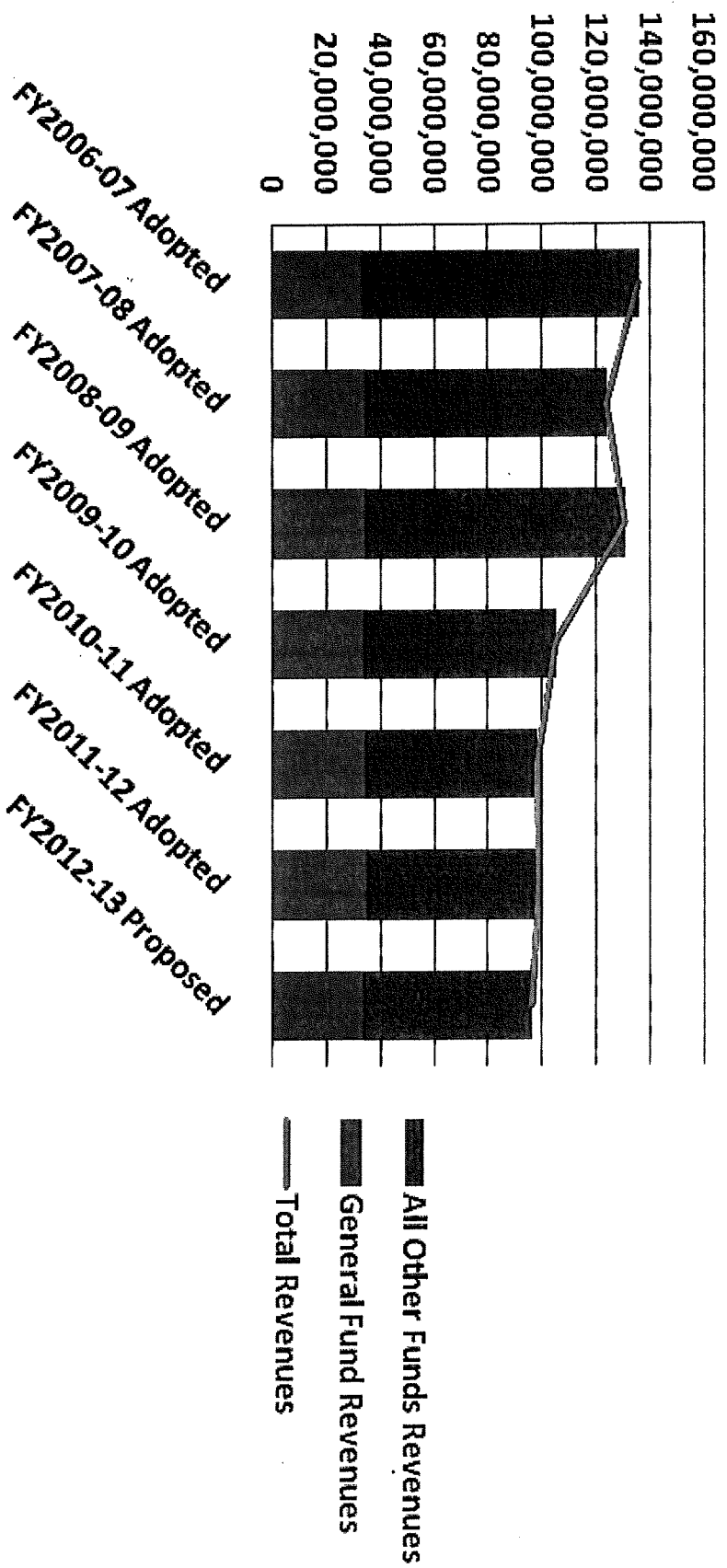


Ad Valorem Revenues



Total City Revenues Fiscal Year 2011 - 2012

City of Titusville Revenue



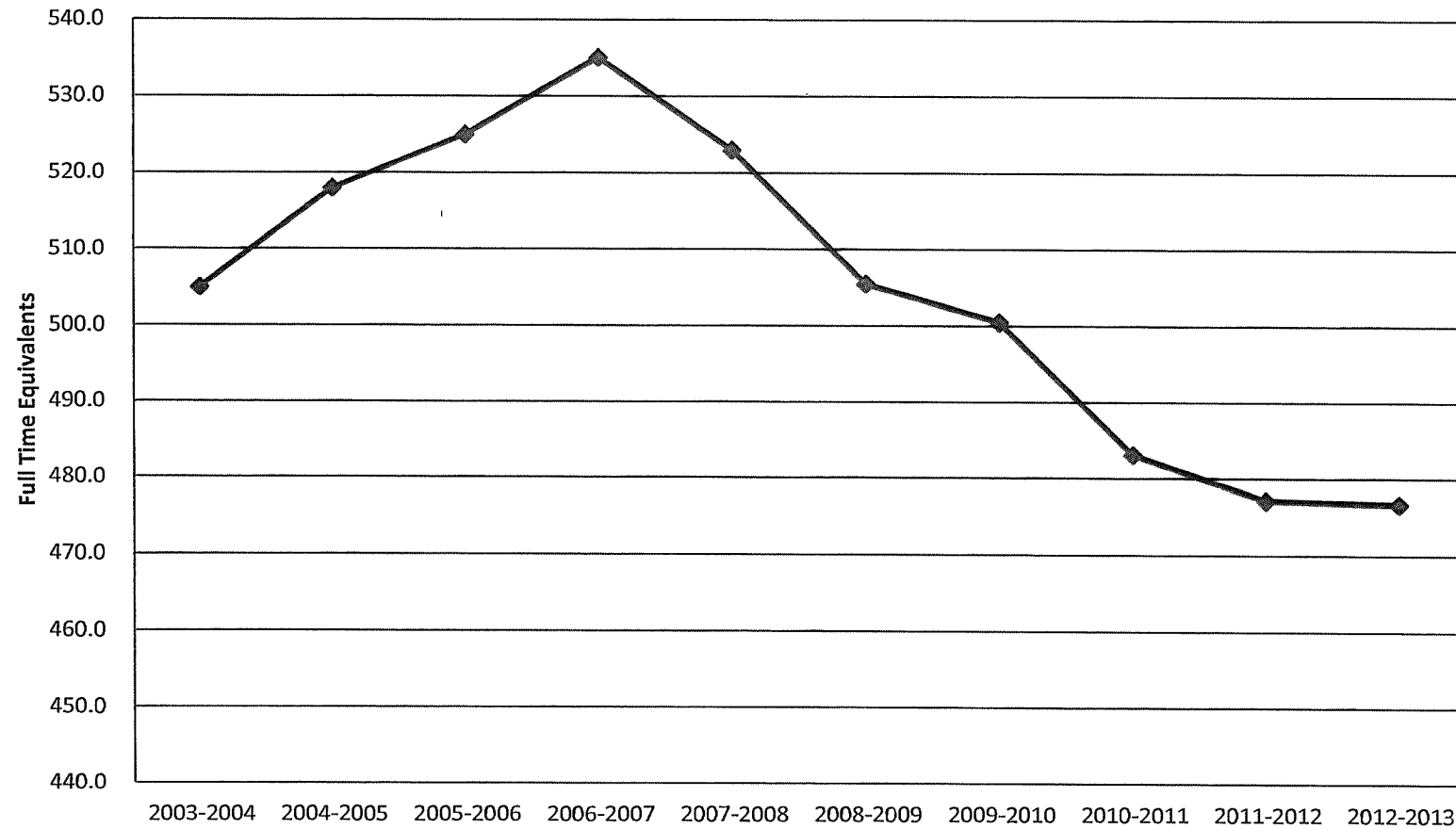
City Pension Contributions

FYE 9/30	Police/Fire	% Payroll	General	% Payroll	Total Cost
2013	\$3.33m	50.33%	\$3.56m	36.38%	\$6.89m
2012	\$3.0m	44.93%	\$3.09m	29.09%	\$6.09m
2011	\$2.15m	33.8%	\$2.44m	24.5%	\$4.59m
2010	\$949k	18.5%	\$2.34m	20.5%	\$2.3m
2009	\$1.05m	14.6%	\$1.94m	16.5%	\$2.99m
2008	\$959k	14.1%	\$1.97m	16.5%	\$2.92m
2007	\$740k	11.9%	\$1.75m	16.3%	\$2.49m
2006	\$655k	10.6%	\$1.58m	15.5%	\$2.23m
% increase	+409%		126%		+209%

City Unfunded Accrued Pension Liability

Date	Police/Fire	General	Total
10/1/11	\$25.25m	\$21.28 m	\$46.55m
10/1/10	\$24.6m	\$19.2m	\$43.8m
10/1/09	\$20.5m	\$16.7m	\$37.2m
10/1/08	\$20.2m	\$9.7m	\$29.9m
10/1/07	\$18.5m	\$6.6m	\$25.1m
10/1/06	\$15.7m	\$7.4m	\$23.1m
10/1/05	\$13.0m	\$7.0m	\$20.0m
% increase	95%	204%	133%

City of Titusville Total Staffing Levels



Pension plan	Union	Age at Retirement or Entrance of Drop	Years of Service ***	Salary at time of retirement or drop*	Yearly Pension amount**	Percentage of base pay	
Police & Fire	IAFF	55	23	\$48,630.40	\$36,681.72	75.43%	
Police & Fire	IAFF	51	27	\$56,813.12	\$57,489.24	101.19%	
Police & Fire	Non-Union	50	25	\$70,012.80	\$68,428.08	97.74%	
Police & Fire	Non-Union	47	25	\$99,091.20	\$91,071.60	91.91%	
Police & Fire	Non-Union	47	25	\$68,315.52	\$65,649.84	96.10%	2012
General	FOP	55	28	\$38,896.00	\$39,569.52	101.73%	
Police & Fire	FOP	53	25	\$51,022.40	\$48,320.16	94.70%	
Police & Fire	FOP	55	13	\$42,827.20	\$34,655.32	80.92%	
Police & Fire	IAFF	51	27	\$59,870.72	\$77,721.72	129.82%	
Police & Fire	Non-Union	50	25	\$75,732.80	\$63,626.04	84.01%	
Police & Fire	Non-Union	47	24	\$96,470.40	\$81,928.56	84.93%	2011
Police & Fire	FOP	62	12	\$41,308.80	\$15,720.36	38.06%	
Police & Fire	IAFF	47	25	\$59,084.48	\$58,999.56	99.86%	
Police & Fire	IAFF	54	29	\$51,309.44	\$51,323.76	100.03%	
Police & Fire	IAFF	52	25	\$51,309.44	\$50,756.64	98.92%	2010
Police & Fire	FOP	60	12	\$45,510.40	\$22,722.12	49.93%	
Police & Fire	FOP	46	14	\$60,091.20	\$55,814.16	92.88%	
Police & Fire	FOP	48	26	\$58,385.60	\$60,111.48	102.96%	
Police & Fire	FOP	49	22	\$58,905.60	\$48,273.84	81.95%	
Police & Fire	FOP	55	21	\$34,174.40	\$9,995.52	29.25%	
Police & Fire	IAFF	46	17	\$59,084.48	\$57,820.92	97.86%	
Police & Fire	IAFF	59	28	\$38,787.84	\$28,908.00	74.53%	
Police & Fire	IAFF	51	19	\$59,259.20	\$70,297.20	118.63%	
Police & Fire	IAFF	52	26	\$45,136.00	\$30,643.56	67.89%	
Police & Fire	IAFF	50	26	\$59,259.20	\$41,357.40	69.79%	
Police & Fire	IAFF	58	25	\$45,136.00	\$27,367.44	60.63%	
Police & Fire	IAFF	47	25	\$59,259.20	\$51,802.32	87.42%	
Police & Fire	Non-Union	51	25	\$71,926.40	\$66,171.96	92.00%	
Police & Fire	Non-Union	49	25	\$80,641.60	\$75,974.16	94.21%	
Police & Fire	Non-Union	45	21	\$69,451.20	\$65,622.24	94.49%	2009
Police & Fire	FOP	46	25	\$50,523.20	\$30,030.04	59.44%	2008
Police & Fire	IAFF	46	25	\$59,259.20	\$50,791.92	85.71%	

* Includes incentive pay and overtime

** Pension amount is calculated using leave pay-outs; only gave first option of what employee elected, some pensions reduce at age 65, some have elected beneficiaries

*** Does not include years of service that have been bought

PENSION MULTIPLIER

Below is the table reflecting the Pension multiplier change over time:

<u>YEAR</u>	<u>POLICE & FIRE EMPLOYEES</u>	<u>YEAR</u>	<u>GENERAL EMPLOYEES</u>
1985	2.0%		2.0%
July 1989	2.5%		
1992		1992	2.0 %
1993		1993	2.06%
1994		1994	2.15%
8-27-1996	2.5%	1996	2.18%
8-12-1997	2.555%	1997	2.25%
2-24-1998	2.708%	1998	2.28%
3-31-1999	2.776%	1999	2.418%
2000	2.879%	2000	2.482%
2001	2.932%		
2002	2.977%		
2003	3.0%		
2007	*		

*COLA 1.277% annually starting 1 year after retirement

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: PCS/SB 50 (430764)

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Public Meetings

DATE: February 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	Pre-meeting
2.			AP	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

PCS/SB 50 (430764) requires members of the public to be given a reasonable opportunity to be heard on a proposition before a state or local government board or commission. Such opportunity does not have to occur at the same meeting at which the board or commission takes official action if certain requirements are met. The bill excludes specified meetings and acts from the “right to speak” requirement.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. It authorizes a board or commission to adopt certain reasonable rules or policies governing the opportunity to be heard. If a board or commission adopts such rules or policies and thereafter complies with them, it is deemed to be acting in compliance with the section.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the section upon the filing of an application for such injunction by any citizen of Florida. If an action is filed against a board or commission to enforce the provisions of the section and the court determines that the board or commission violated the section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or authority. The bill also authorizes the court

to assess reasonable attorney fees against the individual filing the action if the court finds that the action was filed in bad faith or was frivolous. The bill excludes specified public officers from its attorney fee provisions. The bill requires a court to assess reasonable attorney fees if a board or commission appeals a court order finding that such board or commission violated the section and the order is affirmed.

The bill provides that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

This bill creates section 286.0114 of the Florida Statutes.

II. Present Situation:

Florida Constitution: Public Meetings

The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.¹

Government in the Sunshine Law

Access to government meetings is also governed by the Florida Statutes. Section 286.011, F.S., also known as the “Government in the Sunshine Law” or “Sunshine Law,” requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings. Public meetings may not be held in certain locations that discriminate on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.² Minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and be open to public inspection.³

Right to Speak at Public Meetings

The Florida Constitution and the Florida Statutes are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings.

In *Keesler v. Community Maritime Park Associates, Inc.*,⁴ the plaintiffs alleged that the Community Maritime Park Associates, Inc. (CMPA)⁵ violated the Sunshine Law by not

¹ Article I, s. 24(b) of the Florida Constitution.

² Section 286.011(6), F.S.

³ Section 286.011(2), F.S.

⁴ 32 So.3d 659 (Fla. 1st DCA 2010).

⁵ The CMPA is a not-for-profit corporation charged by the City of Pensacola with overseeing the development of a parcel of public waterfront property. The CMPA did not dispute that it was subject to the requirements of the Sunshine Law. *Id.* at 660.

providing them the opportunity to speak at a public meeting concerning the development of certain waterfront property. The plaintiffs argued that the Sunshine Law phrase “open to the public” grants citizens the right to speak at public meetings. The First District Court of Appeal held that no such right exists:

Relying on the language in *Marston*⁶, the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase “open to the public” to grant the public the right to speak, and in light of the clear and unambiguous language in *Marston* (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.⁷

In the second case, *Kennedy v. St. Johns Water Management District*, the plaintiffs alleged, in part, that the St. Johns Water Management District (the district) violated the Sunshine Law by preventing certain people from speaking at a public meeting concerning the proposed approval of a water use permit.⁸ The trial court held that, “Because, as clearly articulated in *Keesler*, the Sunshine Law does not require the public be allowed to speak, plaintiffs’ claim ... fails as a matter of law.”⁹ The Fifth District Court of Appeal affirmed the trial court’s ruling.¹⁰

III. Effect of Proposed Changes:

The bill creates s. 286.0114, F.S., providing that members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action on the proposition if such opportunity:

- Occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission takes official action on the item;
- Occurs at a meeting that is during the decision-making process; and
- Is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

A private entity is generally subject to public records and open meetings laws when 1) there has been a delegation of the public agency’s governmental functions; or 2) the private entity plays an integral part in the decision-making process of the public agency or has a significant level of involvement with the public agency’s performance of its duties. *See* Ops. Att’y Gen. Fla. 92-53 (1992) (direct support organization created for purpose of assisting public museum subject to s. 286.011, F.S.); 83-95 (1983) (where county accepted services of nongovernmental committee to recodify and amend county’s zoning laws, committee subject to Sunshine Law).

⁶ In *Wood v. Marston*, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the university’s college of law. However, the *Marston* court noted “nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process.” *Wood v. Marston*, 442 So.2d 934, 941 (Fla. 1983).

⁷ *Keesler*, *supra* note 3, at 660-61.

⁸ The trial court was the Circuit Court of the Seventh Judicial Circuit, in and for Putnam County, Florida. *See* the trial court’s “Order Granting Motion for Summary Judgment,” September 28, 2010, at 1-3 (on file with the Governmental Oversight and Accountability Committee).

⁹ *Id.* at 6.

¹⁰ 2011 WL 5124949 (Fla. 5th DCA 2011).

The opportunity to be heard is not required for meetings that are exempt from open meetings requirements or for meetings in which the board or commission is acting in a quasi-judicial capacity. The bill specifies that such exclusion does not affect the right of a person to be heard as otherwise provided by law.

In addition, the opportunity to be heard is not required when a board or commission is considering:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act; or
- An official act involving no more than a ministerial act.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

The bill authorizes a board or commission to adopt reasonable rules or policies governing the opportunity to be heard.¹¹ Such rules or policies must be limited to those that:

- Provide guidelines regarding the time an individual has to address the board or commission;
- Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- Designate a specified period of time for public comment.

The bill provides that the board or commission is deemed to be acting in compliance with the section if the board or commission adopts rules or policies in compliance with the section and follows such rules or policies when providing an opportunity to be heard.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing this section upon the filing of an application for such injunction by any citizen of Florida.

Whenever an action is filed against a board or commission to enforce the provisions of this section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or authority if the court determines that the defendant to such action acted in violation of the section. The bill also authorizes the court to assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. These attorney fee provisions do not apply to a state attorney, to his or her duly authorized assistants, or to an officer charged with enforcing the provisions of the act. The bill

¹¹ Executive branch agencies that are subject to the Florida Administrative Procedure Act (ch. 120, F.S.) *must* adopt through the rulemaking process (s. 120.54, F.S.) any agency statement defined as a rule by s. 120.52, F.S. Section 120.52(16), F.S., defines “rule” to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

also requires a court to assess reasonable appellate attorney fees if a board or commission appeals any court order which has found such board or commission to have violated the section and the order is affirmed.

The bill specifies that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of s. 18, Art. VII of the Florida Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with longer meetings or increased meetings due to the new requirement that the public be provided with the opportunity to speak at such meetings.¹² An exemption may apply, however, if the bill has an insignificant fiscal impact. If an exemption does not apply, an exception may still apply if the bill articulates a finding of serving an important state interest and applies to all persons similarly situated. The bill contains a legislative finding of important state interest and applies to boards and commissions of all state agencies and authorities and all agencies and authorities of counties, municipal corporations, and political subdivisions; therefore, it appears to apply to all persons similarly situated.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements are met. The other specified requirements are:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of each such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; *or*
- The law is required to either comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance. *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Governmental entities may incur additional meeting related expenses because longer meetings may be required when considering items of great public interest. The amount of those potential expenses is indeterminate and will vary depending on the magnitude of each issue and the specific associated meeting requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Rulemaking**

The constitutional separation of powers doctrine¹³ prevents the Legislature from delegating its constitutional duties.¹⁴ Because legislative power involves the exercise of policy-related discretion over the content of law,¹⁵ any discretion given an executive branch agency to implement a law must be “pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”¹⁶ Although the bill authorizes, but does not require, boards and commissions to adopt certain rules or policies, executive branch agencies are required to adopt as a rule a statement of general applicability that implements law or policy and that imposes a requirement not specifically required by statutes or existing rule.¹⁷ The bill prescribes the items that such rules or policies may address.

Boards and commissions subject to the state Administrative Procedure Act¹⁸ must comply with the rulemaking procedures set forth in that chapter. Generally, rulemaking pursuant to those procedures takes a minimum of 90 days.¹⁹

Other Comments

¹³ Article II, s. 3 of the Florida Constitution.

¹⁴ See *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

¹⁵ See *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

¹⁶ See *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

¹⁷ See note 11.

¹⁸ Chapter 120, F.S. The chapter applies to any “agency” as defined in s. 120.52(1), F.S.

¹⁹ See s. 120.54, F.S.

The bill does not define the terms “proposition,” “reasonable proximity,” “ministerial act,” “factions,” and “groups.”

The bill does not specify what is considered an “unreasonable delay” when deciding if the public’s opportunity to be heard should be usurped.

It is unclear whether a state board’s or commission’s denial of someone’s right to speak may constitute an agency action challengeable under the Administrative Procedure Act. In cases in which an administrative remedy is available, a plaintiff may be required to exhaust all administrative remedies before pursuing a civil remedy.²⁰

As currently drafted, each state or local board or commission is authorized to create its own rules or policies governing the right to speak. Allowing each state board or commission to create its own rules allows it to tailor its rules to its needs, but may not provide as much ease of use by the public as would uniform rules created by an entity such as the Administration Commission.

The bill specifies that a circuit court may issue injunctions to enforce the provisions of the act. It is unclear whether this could be interpreted to exclude civil remedies other than injunctions and the attorney fees also explicitly authorized by the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS (430764) by Committee on Governmental Oversight and Accountability:

The PCS differs from the original bill in that it:

- Creates a definition for “board or commission” for drafting clarity. The substance of the definition is pulled from the original bill.
- Clarifies that an opportunity to speak must occur at a meeting that is within reasonable proximity *in time* to the meeting at which the board or commission takes official action on the proposition.
- Specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.
- Changes the term “item” to “proposition” throughout the bill for conformity.
- Deletes the phrase “with respect to the rights or interests of a person” from (3)(d) to prevent confusion over whom or what constitutes a “person.”
- Clarifies that the restrictions on rules and policies apply only to those governing the opportunity to be heard.
- Rephrases (4)(a), relating to specifying *a limit* on the time an individual has to address a board or commission, to provide more flexibility by instead specifying that a board or commission may provide *guidelines* relating to the time an individual may speak.
- Rephrases (4)(b), relating to *requiring* a selection of a representative of a group or faction, to provide more flexibility by instead specifying that a board or commission

²⁰ See, for example, *Orange County, Fla. v. Game and Fresh Water Fish Commission*, 397 So.2d 411 (Fla. 5th DCA 1981).

may *prescribe procedures* for allowing representatives of a group or faction to address the board or commission.

- Replaces the phrase “it is presumed that” in (5) with “is deemed to be” to prevent confusion about whether the subsection is creating a rebuttable legal presumption.
- Relocates the authorization of a circuit court to issue injunctions before the attorney fee provisions for drafting clarity.
- Replaces the authorization of *the* circuit courts to issue injunctions with *a* circuit court for drafting clarity.
- Authorizes attorney fees at the appellate level in addition to at the circuit court level if a board or commission is found to have violated the section.
- Replaces references within the bill to “the act” with “the section” for clarity.
- Adds a finding of important state interest.
- Changes the bill’s effective date to from July 1, 2013 to October 1, 2013 to allow boards and commissions subject to ch. 120, F.S., to promulgate rules.

B. Amendments:

None.



430764

585-01540C-13

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to public meetings; creating s. 286.0114, F.S.; defining "board or commission"; requiring that a member of the public be given a reasonable opportunity to be heard by a board or commission before it takes official action on a proposition; providing exceptions; establishing requirements for rules or policies adopted by the board or commission; providing that compliance with the requirements of this section is deemed to have occurred under certain circumstances; providing that a circuit court has jurisdiction to issue an injunction under certain circumstances; authorizing a court to assess reasonable attorney fees in actions filed against a board or commission; providing that an action taken by a board or commission which is found in violation of this section is not void; providing that the act fulfills an important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 286.0114, Florida Statutes, is created to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.-

(1) For purposes of this section, "board or commission"



430764

585-01540C-13

means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition, if the opportunity occurs at a meeting that satisfies the same notice requirements as the meeting at which the board or commission takes official action on the proposition, occurs at a meeting that is during the decisionmaking process, and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not



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585-01540C-13

57 affect the right of a person to be heard as otherwise provided
58 by law.

59 (4) Rules or policies of a board or commission which govern
60 the opportunity to be heard are limited to those that:

61 (a) Provide guidelines regarding the amount of time an
62 individual has to address the board or commission;

63 (b) Prescribe procedures for allowing representatives of
64 groups or factions on a proposition to address the board or
65 commission, rather than all members of such groups or factions,
66 at meetings in which a large number of individuals wish to be
67 heard;

68 (c) Prescribe procedures or forms for an individual to use
69 in order to inform the board or commission of a desire to be
70 heard; to indicate his or her support, opposition, or neutrality
71 on a proposition; and to indicate his or her designation of a
72 representative to speak for him or her or his or her group on a
73 proposition if he or she so chooses; or

74 (d) Designate a specified period of time for public
75 comment.

76 (5) If a board or commission adopts rules or policies in
77 compliance with this section and follows such rules or policies
78 when providing an opportunity for members of the public to be
79 heard, the board or commission is deemed to be acting in
80 compliance with this section.

81 (6) A circuit court has jurisdiction to issue an injunction
82 for the purpose of enforcing this section upon the filing of an
83 application for such injunction by a citizen of this state.

84 (7) (a) Whenever an action is filed against a board or
85 commission to enforce this section, the court shall assess



430764

585-01540C-13

86 reasonable attorney fees against such board or commission if the
87 court determines that the defendant to such action acted in
88 violation of this section. The court may assess reasonable
89 attorney fees against the individual filing such an action if
90 the court finds that the action was filed in bad faith or was
91 frivolous. This paragraph does not apply to a state attorney or
92 his or her duly authorized assistants or an officer charged with
93 enforcing this section.

94 (b) Whenever a board or commission appeals a court order
95 that has found the board or commission to have violated this
96 section, and such order is affirmed, the court shall assess
97 reasonable attorney fees for the appeal against such board or
98 commission.

99 (8) An action taken by a board or commission which is found
100 to be in violation of this section is not void as a result of
101 that violation.

102 Section 2. The Legislature finds that a proper and
103 legitimate state purpose is served when members of the public
104 have been given a reasonable opportunity to be heard on a
105 proposition before a board or commission of a state agency or
106 authority, or of an agency or authority of a county, municipal
107 corporation, or political subdivision. Therefore, the
108 Legislature determines and declares that this act fulfills an
109 important state interest.

110 Section 3. This act shall take effect October 1, 2013.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 50

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Negrón

SUBJECT: Public Meetings

DATE: February 7, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	Fav/CS
2.			AP	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 50 requires members of the public to be given a reasonable opportunity to be heard on a proposition before a state or local government board or commission. Such opportunity does not have to occur at the same meeting at which the board or commission takes official action if certain requirements are met. The bill excludes specified meetings and acts from the “right to speak” requirement.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. It authorizes a board or commission to adopt certain reasonable rules or policies governing the opportunity to be heard. If a board or commission adopts such rules or policies and thereafter complies with them, it is deemed to be acting in compliance with the section.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the section upon the filing of an application for such injunction by any citizen of Florida. If an action is filed against a board or commission to enforce the provisions of the section and the court determines that the board or commission violated the section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or authority. The bill also authorizes the court

to assess reasonable attorney fees against the individual filing the action if the court finds that the action was filed in bad faith or was frivolous. The bill excludes specified public officers from its attorney fee provisions. The bill requires a court to assess reasonable attorney fees if a board or commission appeals a court order finding that such board or commission violated the section and the order is affirmed.

The bill provides that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

This bill creates section 286.0114 of the Florida Statutes.

II. Present Situation:

Florida Constitution: Public Meetings

The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.¹

Government in the Sunshine Law

Access to government meetings is also governed by the Florida Statutes. Section 286.011, F.S., also known as the “Government in the Sunshine Law” or “Sunshine Law,” requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings. Public meetings may not be held in certain locations that discriminate on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.² Minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and be open to public inspection.³

Right to Speak at Public Meetings

The Florida Constitution and the Florida Statutes are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings.

In *Keesler v. Community Maritime Park Associates, Inc.*,⁴ the plaintiffs alleged that the Community Maritime Park Associates, Inc. (CMPA)⁵ violated the Sunshine Law by not

¹ Article I, s. 24(b) of the Florida Constitution.

² Section 286.011(6), F.S.

³ Section 286.011(2), F.S.

⁴ 32 So.3d 659 (Fla. 1st DCA 2010).

⁵ The CMPA is a not-for-profit corporation charged by the City of Pensacola with overseeing the development of a parcel of public waterfront property. The CMPA did not dispute that it was subject to the requirements of the Sunshine Law. *Id.* at 660.

providing them the opportunity to speak at a public meeting concerning the development of certain waterfront property. The plaintiffs argued that the Sunshine Law phrase “open to the public” grants citizens the right to speak at public meetings. The First District Court of Appeal held that no such right exists:

Relying on the language in *Marston*⁶, the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase “open to the public” to grant the public the right to speak, and in light of the clear and unambiguous language in *Marston* (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.⁷

In the second case, *Kennedy v. St. Johns Water Management District*, the plaintiffs alleged, in part, that the St. Johns Water Management District (the district) violated the Sunshine Law by preventing certain people from speaking at a public meeting concerning the proposed approval of a water use permit.⁸ The trial court held that, “Because, as clearly articulated in *Keesler*, the Sunshine Law does not require the public be allowed to speak, plaintiffs’ claim ... fails as a matter of law.”⁹ The Fifth District Court of Appeal affirmed the trial court’s ruling.¹⁰

III. Effect of Proposed Changes:

The bill creates s. 286.0114, F.S., providing that members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action on the proposition if such opportunity:

- Occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission takes official action on the item;
- Occurs at a meeting that is during the decision-making process; and
- Is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

A private entity is generally subject to public records and open meetings laws when 1) there has been a delegation of the public agency’s governmental functions; or 2) the private entity plays an integral part in the decision-making process of the public agency or has a significant level of involvement with the public agency’s performance of its duties. *See* Ops. Att’y Gen. Fla. 92-53 (1992) (direct support organization created for purpose of assisting public museum subject to s. 286.011, F.S.); 83-95 (1983) (where county accepted services of nongovernmental committee to recodify and amend county’s zoning laws, committee subject to Sunshine Law).

⁶ In *Wood v. Marston*, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the university’s college of law. However, the *Marston* court noted “nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process.” *Wood v. Marston*, 442 So.2d 934, 941 (Fla. 1983).

⁷ *Keesler*, *supra* note 3, at 660-61.

⁸ The trial court was the Circuit Court of the Seventh Judicial Circuit, in and for Putnam County, Florida. *See* the trial court’s “Order Granting Motion for Summary Judgment,” September 28, 2010, at 1-3 (on file with the Governmental Oversight and Accountability Committee).

⁹ *Id.* at 6.

¹⁰ 2011 WL 5124949 (Fla. 5th DCA 2011).

The opportunity to be heard is not required for meetings that are exempt from open meetings requirements or for meetings in which the board or commission is acting in a quasi-judicial capacity. The bill specifies that such exclusion does not affect the right of a person to be heard as otherwise provided by law.

In addition, the opportunity to be heard is not required when a board or commission is considering:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act; or
- An official act involving no more than a ministerial act.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

The bill authorizes a board or commission to adopt reasonable rules or policies governing the opportunity to be heard.¹¹ Such rules or policies must be limited to those that:

- Provide guidelines regarding the time an individual has to address the board or commission;
- Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- Designate a specified period of time for public comment.

The bill provides that the board or commission is deemed to be acting in compliance with the section if the board or commission adopts rules or policies in compliance with the section and follows such rules or policies when providing an opportunity to be heard.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing this section upon the filing of an application for such injunction by any citizen of Florida.

Whenever an action is filed against a board or commission to enforce the provisions of this section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or authority if the court determines that the defendant to such action acted in violation of the section. The bill also authorizes the court to assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. These attorney fee provisions do not apply to a state attorney, to his or her duly authorized assistants, or to an officer charged with enforcing the provisions of the act. The bill

¹¹ Executive branch agencies that are subject to the Florida Administrative Procedure Act (ch. 120, F.S.) *must* adopt through the rulemaking process (s. 120.54, F.S.) any agency statement defined as a rule by s. 120.52, F.S. Section 120.52(16), F.S., defines “rule” to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

also requires a court to assess reasonable appellate attorney fees if a board or commission appeals any court order which has found such board or commission to have violated the section and the order is affirmed.

The bill specifies that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of s. 18, Art. VII of the Florida Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with longer meetings or increased meetings due to the new requirement that the public be provided with the opportunity to speak at such meetings.¹² An exemption may apply, however, if the bill has an insignificant fiscal impact. If an exemption does not apply, an exception may still apply if the bill articulates a finding of serving an important state interest and applies to all persons similarly situated. The bill contains a legislative finding of important state interest and applies to boards and commissions of all state agencies and authorities and all agencies and authorities of counties, municipal corporations, and political subdivisions; therefore, it appears to apply to all persons similarly situated.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements are met. The other specified requirements are:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of each such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; *or*
- The law is required to either comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance. *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Governmental entities may incur additional meeting related expenses because longer meetings may be required when considering items of great public interest. The amount of those potential expenses is indeterminate and will vary depending on the magnitude of each issue and the specific associated meeting requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Rulemaking**

The constitutional separation of powers doctrine¹³ prevents the Legislature from delegating its constitutional duties.¹⁴ Because legislative power involves the exercise of policy-related discretion over the content of law,¹⁵ any discretion given an executive branch agency to implement a law must be “pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”¹⁶ Although the bill authorizes, but does not require, boards and commissions to adopt certain rules or policies, executive branch agencies are required to adopt as a rule a statement of general applicability that implements law or policy and that imposes a requirement not specifically required by statutes or existing rule.¹⁷ The bill prescribes the items that such rules or policies may address.

Boards and commissions subject to the state Administrative Procedure Act¹⁸ must comply with the rulemaking procedures set forth in that chapter. Generally, rulemaking pursuant to those procedures takes a minimum of 90 days.¹⁹

Other Comments

¹³ Article II, s. 3 of the Florida Constitution.

¹⁴ See *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

¹⁵ See *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

¹⁶ See *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

¹⁷ See note 11.

¹⁸ Chapter 120, F.S. The chapter applies to any “agency” as defined in s. 120.52(1), F.S.

¹⁹ See s. 120.54, F.S.

The bill does not define the terms “proposition,” “reasonable proximity,” “ministerial act,” “factions,” and “groups.”

The bill does not specify what is considered an “unreasonable delay” when deciding if the public’s opportunity to be heard should be usurped.

It is unclear whether a state board’s or commission’s denial of someone’s right to speak may constitute an agency action challengeable under the Administrative Procedure Act. In cases in which an administrative remedy is available, a plaintiff may be required to exhaust all administrative remedies before pursuing a civil remedy.²⁰

As currently drafted, each state or local board or commission is authorized to create its own rules or policies governing the right to speak. Allowing each state board or commission to create its own rules allows it to tailor its rules to its needs, but may not provide as much ease of use by the public as would uniform rules created by an entity such as the Administration Commission.

The bill specifies that a circuit court may issue injunctions to enforce the provisions of the act. It is unclear whether this could be interpreted to exclude civil remedies other than injunctions and the attorney fees also explicitly authorized by the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 6, 2013:

The CS differs from the original bill in that it:

- Creates a definition for “board or commission” for drafting clarity. The substance of the definition is pulled from the original bill.
- Clarifies that an opportunity to speak must occur at a meeting that is within reasonable proximity *in time* to the meeting at which the board or commission takes official action on the proposition.
- Specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.
- Changes the term “item” to “proposition” throughout the bill for conformity.
- Deletes the phrase “with respect to the rights or interests of a person” from (3)(d) to prevent confusion over whom or what constitutes a “person.”
- Clarifies that the restrictions on rules and policies apply only to those governing the opportunity to be heard.
- Rephrases (4)(a), relating to specifying *a limit* on the time an individual has to address a board or commission, to provide more flexibility by instead specifying that a board or commission may provide *guidelines* relating to the time an individual may speak.
- Rephrases (4)(b), relating to *requiring* a selection of a representative of a group or faction, to provide more flexibility by instead specifying that a board or commission

²⁰ See, for example, *Orange County, Fla. v. Game and Fresh Water Fish Commission*, 397 So.2d 411 (Fla. 5th DCA 1981).

may *prescribe procedures* for allowing representatives of a group or faction to address the board or commission.

- Replaces the phrase “it is presumed that” in (5) with “is deemed to be” to prevent confusion about whether the subsection is creating a rebuttable legal presumption.
- Relocates the authorization of a circuit court to issue injunctions before the attorney fee provisions for drafting clarity.
- Replaces the authorization of *the* circuit courts to issue injunctions with *a* circuit court for drafting clarity.
- Authorizes attorney fees at the appellate level in addition to at the circuit court level if a board or commission is found to have violated the section.
- Replaces references within the bill to “the act” with “the section” for clarity.
- Adds a finding of important state interest.
- Changes the bill’s effective date to from July 1, 2013 to October 1, 2013 to allow boards and commissions subject to ch. 120, F.S., to promulgate rules.

B. Amendments:

None.

By Senator Negrón

32-00046-13

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1 A bill to be entitled
 2 An act relating to public meetings; creating s.
 3 286.0114, F.S.; requiring that a member of the public
 4 be given a reasonable opportunity to be heard before a
 5 board or commission takes official action on a
 6 proposition before a board or commission of any state
 7 agency or authority or of any agency or authority of
 8 any county, municipal corporation, or political
 9 subdivision; providing that the opportunity to be
 10 heard is subject to rules or policies adopted by the
 11 board or commission; specifying certain exceptions;
 12 providing requirements for rules or policies governing
 13 the opportunity to be heard; providing that compliance
 14 with the requirements of the act is presumed under
 15 certain circumstances; authorizing a court to assess
 16 reasonable attorney fees in actions filed against a
 17 board or commission; providing that any action taken
 18 by a board or commission which is found in violation
 19 of the act is not void; providing that circuit courts
 20 have jurisdiction to issue injunctions for purposes of
 21 the act; providing an effective date.

22 Be It Enacted by the Legislature of the State of Florida:

23 Section 1. Section 286.0114, Florida Statutes, is created
 24 to read:

25 286.0114 Public meetings; reasonable opportunity to be
 26 heard; attorney fees.—

27 (1) Members of the public shall be given a reasonable
 28
 29

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201350__

30 opportunity to be heard on a proposition before a board or
 31 commission of any state agency or authority or of any agency or
 32 authority of any county, municipal corporation, or political
 33 subdivision. The opportunity to be heard need not occur at the
 34 same meeting at which the board or commission takes official
 35 action on the item, if the opportunity occurs at a meeting that
 36 meets the same notice requirements as the meeting at which the
 37 board or commission takes official action on the item, occurs at
 38 a meeting that is during the decisionmaking process, and is
 39 within reasonable proximity before the meeting at which the
 40 board or commission takes the official action. The opportunity
 41 to be heard is subject to reasonable rules or policies adopted
 42 by the board or commission to ensure the orderly conduct of a
 43 public meeting, as provided in subsection (3).

44 (2) The requirements in subsection (1) do not apply to:

45 (a) An official act that must be taken to deal with an
 46 emergency situation affecting the public health, welfare, or
 47 safety, when compliance with the requirements would cause an
 48 unreasonable delay in the ability of the board or commission to
 49 act;

50 (b) An official act involving no more than a ministerial
 51 act;

52 (c) Any meeting that is exempt from the provisions of s.
 53 286.011; or

54 (d) A meeting in which the board or commission is acting in
 55 a quasi-judicial capacity with respect to the rights or
 56 interests of a person. This paragraph does not affect the right
 57 of a person to be heard as otherwise provided by law.

58 (3) Rules or policies of a board or commission must be

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59 limited to rules or policies that:

60 (a) Limit the time an individual has to address the board
 61 or commission;

62 (b) Require, at meetings in which a large number of
 63 individuals wish to be heard, that representatives of groups or
 64 factions on an item, rather than all of the members of the
 65 groups or factions, address the board or commission;

66 (c) Prescribe procedures or forms for an individual to use
 67 in order to inform the board or commission of a desire to be
 68 heard; to indicate his or her support, opposition, or neutrality
 69 on a proposition; and to indicate his or her designation of a
 70 representative to speak for him or her or his or her group on a
 71 proposition if he or she so chooses; or

72 (d) Designate a specified period of time for public
 73 comment.

74 (4) (a) If a board or commission adopts rules or policies in
 75 compliance with this section and follows such rules or policies
 76 when providing an opportunity for members of the public to be
 77 heard, it is presumed that the board or commission is acting in
 78 compliance with this section.

79 (b) Whenever an action is filed against a board or
 80 commission of any state agency or authority of a county,
 81 municipal corporation, or political subdivision to enforce the
 82 provisions of this section, the court shall assess reasonable
 83 attorney fees against such agency or authority if the court
 84 determines that the defendant to such action acted in violation
 85 of this section. The court may assess reasonable attorney fees
 86 against the individual filing such an action if the court finds
 87 that the action was filed in bad faith or was frivolous. This

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201350

88 paragraph does not apply to a state attorney or his or her duly
 89 authorized assistants or any officer charged with enforcing the
 90 provisions of this section.

91 (c) Any action taken by a board or commission which is
 92 found to be in violation of this section is not void as a result
 93 of that violation.

94 (d) The circuit courts have jurisdiction to issue
 95 injunctions for the purpose of enforcing this section upon the
 96 filing of an application for such injunction by any citizen of
 97 this state.

98 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 / 6 / 2013

Meeting Date

Topic Public meetings Bill Number 50
(if applicable)
Name BRIAN PITTS Amendment Barcode _____
(if applicable)
Job Title TRUSTEE
Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street
SAINT PETERSBURG FLORIDA 33705
City State Zip
Speaking: ☐ For ☐ Against ☒ Information
Representing JUSTICE-2-JESUS
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6 Feb 13

Meeting Date

Topic Public Meetings Bill Number SB 50
(if applicable)
Name Charles Milsted Amendment Barcode _____
(if applicable)
Job Title Associate State Director
Address 200 West College Avenue Phone 850-577-5190
Street
Tallahassee FL 32301
City State Zip
Speaking: ☒ For ☐ Against ☐ Information
Representing AARP
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Talk point to HB ~~231/501~~ public meet AMENDMENT

Members this good amendment on public meetings is a house cleaning measure which simply is long overdue it describes specifically how persons have a right to be informed and participate in state and local government meetings by public comment and questions based on the agenda and entity involved, and the process that is to be followed by such a entity subject to sunshine law. There has been great defiance in this matter to our citizens by both state and local entities who are ultimately answerable and accountable to the people which must be checked and stopped. So simply and clearly this is just what this amendment fixes as the abundance of AG, 2nd, 3rd, 4th DCA opinions and Florida government in the sunshine manual pages 49-50/62-64(produced by the 1st amendment foundation) bring out on this matter verses the recent 1st, 5th DCA opinions which are clearly not on point and in conflict with the majority opinions in this state.

Therefore, I ask for your favorable vote on this amendment.

DELETE EVERYTHING AFTER THE ENACTING CLAUSE AND INSERT:

Section 1. Section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, or of any entity created under general, special or local law, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, ordinance, code, or formal action shall be ~~considered~~ binding except as taken or made at such meeting. The following requirements shall apply as to all meetings formal or informal:

(a) The board, entity or commission must provide reasonable notice and the matters to be agenda with all attachments no less than three days prior to of all such meetings, unless emergency in nature then it shall be no less than 24 hours. The agenda may be amended thereafter when necessary. At least two copies of the agenda with all attachments shall be available for public inspection the day of each meeting.

(b) Citizens or other persons shall have the right to speak within no less than three minutes, at the discretion of the presiding officer such may be extended, on any matter within the purview of the board, commission, or entity, not pending on the agenda or for public hearing, at the beginning of the meeting either after the call to order or pledge and invocation segment of the agenda as shown in the order printed.

(c) Citizens or other persons shall have the right to speak within no less than three minutes, at the discretion of the presiding officer such may be extended, on each pending agenda item which effect appointment of public officers, land use, taxes, fees, rates, fines, rights, and interests of any given citizens, persons or businesses such matters shall not be placed as consent items on the agenda. All other matters such as awards, presentations, reports, minutes, announcements, and internally or solely administrative and ministerial or emergency in nature cited on the agenda shall be at the discretion of the presiding officer to allow public comment.

(d) On each pending item listed on the agenda for public hearing citizens or other persons shall have the right to speak within no less than three minutes, at the discretion of the presiding officer such may be extended, whether they are proponents, opponents or undecided on the item pending for action.

(e) Any Reasonable or legitimate questions that arise, where clearly inquired of the board, commission, or entity, from citizens or other persons while exercising their right to speak shall be responded to either at the meeting publicly or by some form of correspondence within ten days of the inquiry which response shall be recorded with the minutes of the meeting for public inspection.

(f) At the discretion of the presiding officer over any meetings as prescribed in this section in which a large number of individuals wish to be heard, it may be required that representatives of groups or factions on an item, rather than all of the members of the groups or factions, address the board, entity, or commission. Where there would be yet still a large number of individuals who wish to speak on an item, or in general there is a large number of individuals who wish to speak on an item, numbering over twenty, it shall be in the discretion of the presiding officer as to the time permitted per person which shall be no less than one minute as time would permit until adjournment, nevertheless, a time certain may be set for each pending agenda item or public hearing matter for disposition.

(g) A General form shall be provided by the board, commission, or entity for citizens or other persons to register to speak as they wish on all matters in their purview or pending agenda items as required by law. The presiding officer shall have the discretion to control proper and ensure orderly protocol and decorum in all meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority, or entity shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state or other person.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision, or of any entity created under general, special or local law who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, or of any entity created under general, special or local law to enforce the provisions of this section or to invalidate the actions of any such board, entity, commission, agency, or authority, which action was taken in violation of

this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board, entity or commission; provided, that in any case where the board, entity or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board, entity or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, or of any entity created under general, special or local law, appeals any court order which has found said board, entity, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, entity, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board, entity or commission; provided, that in any case where the board, entity or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board, entity or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, or of any entity created under general, special or local law is charged with a violation of this section and is subsequently acquitted, the board, entity or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, or of any entity created under general, special or local law, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The board, entity or commission ~~entity's~~ attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The board, entity or commission ~~entity~~ shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

(9) This section shall preempt all other laws on public meetings unless stated otherwise by the constitution or general law and shall be supplementary to the constitution, general law or court precedent which are not in conflict herewith.

Section 2. This act shall take effect July 1, 2012

Delete everything before the enacting clause and insert:

A bill to be entitled
An act relating to public meetings; amending 286.011, F.S.;... providing an effective date